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ARTHUR POWELL,
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SOMETIME HOLDER OF THE FIRST-CLASS SCHOLARSHIP IN EQUITY
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P R E F A C E .

To attempt to deal in one small book with the whole body of law which should regulate the conduct of any class of persons would be ridiculous, yet inasmuch as certain branches of the *corpus juris* more nearly affect some classes than others, it is thought permissible to include in a handbook of the Law specially affecting Printers, Publishers, and Newspaper Proprietors not only the statutory enactments dealing with these persons exclusively, but also the Law of Libel and Copyright, which perhaps more closely concerns them than any other classes in the community, as well as such subjects as the Law of Master and Servant, the Factory Laws, the Laws regulating the action of Trade Unions, and the Law relating to Nuisances caused by Noisy Machinery, which have a frequent bearing upon their businesses, nor is it deemed improper to append a few observations upon the law concerning some of the most common of the every-day affairs of commercial men.

The book is, for the most part, a reprint, *ipsissimis typis*, of articles contributed monthly during the past four years to my paper, the *Printers' Register*. This mode of producing it has, I fear, conduced to even more

faults and blemishes, both literary and typographical, than would have been apparent under any circumstances: for such of them as are due to it I crave indulgence.

Conceiving that the book, though written chiefly for non-professional readers, may be useful to lawyers who need a handy and inexpensive little treatise on the topics dealt with, I have cited the authorities for most of the propositions advanced in the text.

The fulness of the Index will, it is hoped, make up for the absence of indicatory headings to the pages.

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ADDENDA, &c.

PAGE 19, LINE 5.

Add, "There is a similar clause in the Municipal Elections (Corrupt Practices) Act, 1884 (47 & 48 Vict., c. 70), s. 14. Persons innocently contravening the provisions of either enactment may obtain from the High Court of Justice an order exonerating them from liability to the penalties (46 & 47 Vict., c. 51, s. 23; 47 & 48 Vict., c. 70, s. 20; Exp. *Clark* (1885), 52 L. T. 260)."

PAGE 27, LINE 4.

Since this was printed there have been other cases in which the defendants have been convicted, *e.g.*, see *Printers' Register*, April, 1887.

PAGE 44, LINE 3.

Dele from "Compositors" to end of paragraph, and *add* "at 3, Raquet Court, Fleet Street, price 6d. The scales and rules are given in Southward's 'Practical Printing.'"

PAGE 64, NOTE 79.

For 89 *read* 53.

PAGE 66, LINE 7.

See *Roberts v. Smith* (1859), 28 L. J. Ex. 164.

PAGE 66, LINE 10.

Add, "unless X.Y. is the employer himself, in which case he can in general recover if he can show that the certificate ought to have been given. (Leake on Contracts, p. 637)."

PAGE 76, NOTE 18.

Add, *Paley v. Garnett* (1885), 16 Q. B. D. 52.

PAGE 83, END OF NOTE.

Add, "*Weblin v. Ballard* (1886), 17 Q. B. D. 122; 55 L. J. Q. B. 395; and *Thomas v. Quartermaine* (1887), 18 Q. B. D. 693 (C.A.), where it was decided that the rights of a workman under the Act are the same as those of a member of the public who uses the employer's premises at his invitation on business."

PAGE 84, LINE 15.

Add, "The works, machinery, or plant must be used or connected with the business of the employer. Works, &c., in course of construction are not within the Act. *Hove v. Finch* (1886), 17 Q. B. D. 187."

PAGE 85, NOTE 32.

Add, "See *Thomas v. Quartermaine* (1887), 18 Q. B. D. 693; *Pegram v. Dixon* (1886), 55 L. J. Q. B. 447.

PAGE 86, LINE 14.

Add, "Contributory negligence on the part of the plaintiff is not necessarily proved by the mere fact that he knew the work itself was dangerous (*Weblin v. Ballard* (1886), 17 Q. B. D. 122), but if he both knew and appreciated the danger, he cannot recover if injured. *Thomas v. Quartermaine* (1887), 18 Q. B. D. 685 (C.A.)."

PAGE 86, NOTE 34.

Add, "Approved in *Brown v. Butterley Coal Co.* (1886), 53 L. J. 964."

PAGE 86, NOTE 35.

Add, "See *Paley v. Garnett* (1885), 16 Q. B. D. 52, where perhaps it was considered that the plaintiff was induced, against his will, to go on working the defective machine."

PAGE 102, LINE 3.

An apprentice must work on Bank Holidays if required by his master, unless there be a provision in his Indenture or an established custom to the contrary. The opinion recently expressed by a London police magistrate that workmen and apprentices are not obliged to work on Bank Holidays is conceived to be erroneous, there being nothing in the Act to warrant it.

PAGE 102, LINE 26.

Add, "Where the wages are paid simply in lieu of furnishing the apprentice with board and lodging, deductions cannot, in the writer's opinion, be made therefrom."

PAGE 105, LINE 12.

The authority for this strong proposition is *Phillips v. Clift* (1859), 4 H. & N. 168; 28 L. J. Ex. 153. But in *Cox v. Mathews* (1861), 2 F. & F. 397, Mr. Justice Byles told the jury the defendant (a watchmaker having much gold about his premises) was not bound to keep an habitual thief as his apprentice. See *Westwick v. Theodor* (1875), L. R. 10 Q. B. 224; 44 L. J. Q. B. 110, where the Indenture enabled the master to dismiss the apprentice.

PAGE 106, NOTE 92.

Add, "Where an apprentice was paid weekly wages, and the master closed his office on Christmas Day and the day following, Mr. Commissioner Kerr held that the master was bound to pay the apprentice his full week's wages, and could not deduct for the two days' holidays. It might have been otherwise had he been paid by the day or the hour, or if a trade custom to the contrary had been proved. See *Printers' Register*, April, 1887."

PAGE 142, LINE 18.

Add, "A fair report of the judgment delivered in a case, unaccompanied by any report of the evidence, is privileged (*Macdougall v. Knight* (1886), 17 Q. B. D. 636; 55 L. J. Q. B. 461)."

PAGE 142, NOTE 68.

Ashmore v. Bertwick is reported 49 J. P. 792.

THE LAW AFFECTING PRINTERS.

CHAPTER I.

THE LAWS OF FORMER TIMES.

BEFORE commencing a dissertation on the laws which now regulate the Art of Printing in England, it will be interesting, if not useful, to make a survey of the conditions under which those who practised the Art in former times pursued their calling. For though at first the Press was as free as it is to-day, and even more so, seeing that there were for many years no laws or ordinances whatever in any-wise affecting it, the despotism of the Tudors and the Stuarts engendered a series of laws, decrees, and patents which seriously hindered its development, and greatly harassed those who would fain have aided in the dissemination of knowledge. Nor is the Statute Book yet clear of certain provisions enacted in troublous times imposing on printers duties which at the present day are almost as much honoured in the breach as in the observance.

It is now universally conceded that the first English book emanated from Caxton's press at Westminster in 1477. Six years after that date we find the first mention of the newly discovered Art in the laws of the country. In "An Act touching the Merchants of Italy" (1 Ric. III., c. 9), passed in the year 1483-4, and designed to protect the native Englishman from the encroachments of foreigners, there is a proviso that nothing in that or any other Act of Parliament shall hinder any person from "bringing into this realm or selling by retail or otherwise any books written or printed; or from inhabiting within this said realm for the same intent; or any scrivener, alluminor, reader, or printer

of such books which he hath or shall have to sell by way of merchandise from dwelling within this said realm for the exercise of the said occupation." This clause, permitting of free trade in literature, was, however, repealed in 1534 by the 25 Hen. VIII., c. 15, s. 1.

The statute last quoted is, indeed, the next relating to our subject found on the Rolls of Parliament. It is entitled "An Act for Printers and Binders of Books," and it commences with a recital of the provision of the Statute of Richard III., "by force of which there hath come into this realm sithen the making of the same, a marvellous number of printed books, and daily doth; and the cause of the making of the same provision seemeth to be for that there were but few books and few printers within this realm at that time which could well exercise and occupy the said science and craft of printing; nevertheless, since the making of the said provision, many of this realm, being the king's natural subjects, have given them so diligently to learn and exercise the said craft of printing, that at this day there be within this realm a great number cunning and expert in the said science or craft of printing, as able to exercise the said craft in all points as any stranger in any other realm or country;" and after recording a similar complaint of the importation of books bound abroad, to the detriment of "many of the king's subjects being binders of books, and having no other faculty wherewith to get their living," who thereby "be destitute of work and like to be undone except some reformation herein be had," it proceeds to repeat the aforesaid provision, and to enact that persons buying books brought from beyond sea ready bound shall forfeit 6s. 8d. per book, and that persons buying of aliens by retail any imported printed books shall incur the like penalty. And to prevent the price of books from becoming unreasonable in consequence of this protective legislation, it is provided that on complaint being made, the Lord Chancellor, Lord Treasurer, and two Chief Justices, or two of any of them, shall have power to limit prices "as well

of the books as for the binding of them," and to fine offenders 3s. 4d. per book.

This curious statute, one of very many of a kind sorely at variance with the tenets of the modern school of political economists, appears to have been in force till the passing in 1709 of the first Copyright Act (7 Ann., c. 19), section 4 of which empowered the Archbishop of Canterbury, the Chancellor, the Chief Justices, and other high officials to settle the prices of books upon complaint that they be unreasonable, and imposed a penalty of £5 per book for every volume sold at higher rates than they should fix. Section 7 of the same statute permitted the importation from abroad of books in foreign languages. The law providing for the State assessment of the price of books was not finally repealed till 1739, when it was so by the 12 Geo. II., c. 36.

This State regulation of prices worked little harm to printers compared with the monopolies granted by the Crown and the decrees made by that famous and unconstitutional Council, the Star Chamber. Students of history will remember that one of the great grievances of the people in the reigns of Elizabeth and James I. was the wholesale granting of patents, conferring on persons who could afford to pay for it the sole right to exercise the most ordinary trades. The conferment of these patents produced too good a revenue for printing to escape this vicious interference with trade by the head of the State; and accordingly we find that about 1500 Henry VIII. granted a patent to Richard Pynson, appointing him "King's printer," and that in 1540 the same monarch granted a privilege to Robert Banks, by issuing a proclamation forbidding all other printers printing any manner of books whatsoever that he should first print, within seven years of his first issuing the same. Henry's successors exercised their assumed right more liberally than he did, and many patents were granted by them for the printing of special kinds of books. Thus Edward VI., Mary, and Elizabeth gave Richard Tottell the sole right of printing law books, a right which was extended

ly subsequent sovereigns to his successors, of course on receipt of a large pecuniary consideration. Elizabeth granted to Christopher and Robert Barker, father and son, the monopoly of printing Bibles, Testaments, &c., in English. James I. gave John Norton and his successor the monopoly of printing all Bibles, Testaments, grammars, &c., in Latin, Greek, and Hebrew, besides that of printing various other kinds of books ; while Thomas Synocke had a patent from Charles I. for printing all things that were, might, or should be printed upon one side of paper ! It is a remarkable thing that patents "for or concerning printing" were expressly excepted from the statute against monopolies passed in 1623, and a relic of the old system still remains in the patent held by her Majesty's printers, for printing Bibles, Prayer Books, and certain State papers.

CHAPTER II.

THE LAWS OF FORMER TIMES—(*continued*).

THE first attempt to restrict the liberty of the Press in England seems to have been made in 1530, when Henry VIII. issued a proclamation "for dampning erroneous bokes," wherein it was ordered that certain so-called heretical books should be delivered up to the curate of the parish, and that no new book concerning the Holy Scriptures should be printed in English until the same should have been examined and approved by the ordinary of the diocese. The same king, in 1539, issued a decree restraining the printing of the Bible in English for five years. Edward VI. and Mary do not seem to have placed any restriction on the Press, but Elizabeth, who, "good queen" though she was, aimed at unbridled despotism, procured the Star Chamber to decree in 1566 that no one should print any book against the force and meaning of any ordinance or injunction set forth by the queen's authority, on pain of forfeiting all such books, of being imprisoned for three months, and of being incapable for ever thereafter of "using the feat of printing." And to enforce this decree, authority was given to the Wardens of the Stationers Company "to open and view all packs, dryfats, mounds, and other things wherein books or paper should be contained, and to search all workhouses and other places of printers and booksellers for offensive books," and every printer was to enter into recognizances that he would duly observe all ordinances, pay all forfeitures, and assist the said Wardens.

This was bad enough, but a still severer ordinance was made in 1585, also by the Council of the Star Chamber. By the new decree it was provided that all printers should be registered with the Stationers' Company; that there should be no printing presses out of London, except one at Cambridge and another at Oxford; that no new printing

press even in the Metropolis should be established "till the excessive multitude of printers having presses already sett up be abated" to the satisfaction of the Archbishop of Canterbury or the Bishop of London; that no new book should be printed without its being first approved by the said Archbishop or Bishop, on pain of six months' imprisonment; that no person should bind, stitch, sell, or dispose of any books contrary to the present ordinance; that all printing-offices should be open to the inspection of the Wardens of the Stationers' Company, who were empowered to seize all suspected books, and also to confiscate the presses, types, and other material of any offending printer; that "for the avoyding of the excessive number of printers" no more than three apprentices should be allowed to each printer who was or had been Master of the Stationers' Company, nor more than two to him who was of the livery, and but one to him who belonged to the yeomanry only. The printers of the Universities were suffered to have only one apprentice at a time. This decree was confirmed by a proclamation of the queen in 1588, and by another of James I. in 1623.

The climax was not even yet reached. On the 11th July, 1637, the Star Chamber of Charles I., at the instance of Archbishop Laud, made a decree whereby, after reciting that the decrees and ordinances of Elizabeth had been found by experience to be defective in some particulars, and that divers abuses had thence arisen, it was ordered that the former ordinances should stand in force as amended by the present decree; then followed thirty-three clauses, the chief provisions whereof were, that no book should be printed unless the same should have first been licensed and entered in the register of the Stationers' Company; that every bookseller and other person having books should, before he parted with any, supply a list of them to the Archbishop of Canterbury or the Bishop of London; that upon everything that he printed the printer should set his name, and the name of the author, and by or for whom it

was printed ; that no one should set up a printing-office, nor make a press, nor cast letters without first giving notice to the Stationers' Company ; that, besides his Majesty's printer and the printers to the Universities, there should be twenty master printers and no more (the names of the first privileged ones are given), and in case of vacancies the Archbishop of Canterbury or the Bishop of London, with six other High Commissioners, might fill them up ; that all printers should, within ten days, become bound in the sum of £300 not to print any but licensed books ; that no printer should keep above two presses unless he should have been Master or Upper Warden of his Company, when he might keep three ; and that whereas some printers had already more than this number, the supernumerary presses were to be suppressed ; that there should be four founders of letters only, each of whom should be allowed to have two apprentices ; that founders should employ no one who was not, or had not been, bound to the trade of founding letters, but that each founder might employ one boy who was not so bound to "pull off the knots of mettle hanging to the letters when they are first cast ;" and that one copy of every book should be sent to Stationers' Hall for the Bodleian Library at Oxford. The provisions of the decree of Elizabeth as to the number of apprentices, and as to the inquisitorial powers of the Wardens of the Stationers' Company, were expressly continued. Offences against these decrees were to be dealt with by the Star Chamber or the High Commission Court, and the penalties of infringing any of the provisions were very heavy, extending even to whipping and the pillory.

One would have thought that in the Long Parliament Pym or some other champion of freedom would have procured that a decree so illegal and so vicious should be declared void, but the exact contrary is the fact, for there are several orders of both Lords and Commons confirming its provisions. One man there was who used his mighty

pen to urge the expediency of granting full liberty to the Press--John Milton, the poet, whose essay or "speech" on the subject addressed to the Parliament in 1644, under the name of "*Areopagitica*," is still read as a classic of the English language. But Milton was before his age. Nothing was done in the time of the Commonwealth, and as soon as Charles II. ascended the throne an Act of Parliament (13 & 14 Chas. II., c. 33) was passed, comprising nearly all the provisions of the decree of 1637, and still limiting the number of master printers to twenty. By the 14th clause, which followed the spirit of one in the decree of 1637, provision was made for the constant employment of journeymen, every master printer and letter-founder being required, under a penalty of £5, to employ all respectable journeymen free of their respective trades and applying for work, "although such master printer or master founder of letters respectively, with his apprentice or apprentices, be able, without the said journeymen, to discharge his own work," and journeymen refusing or neglecting employment were to suffer three months' imprisonment at the least; further, no persons were to be employed in the said trades except Englishmen being freemen or sons of freemen or apprentices to the trade. This Act was a temporary one, but it continued by various statutes till 1695.

How it came to pass that the Act expiring in 1695 was not renewed we have not space here to tell. The story is graphically narrated by Macaulay in his "*History of England*," and succinctly stated in the author's "*Short History of Printing*;" but the important fact is that on the 3rd May, 1695, the law which had for so many years subjected the Press to a censorship, and limited the printers of the country to so small a number, expired. The result was remarkable. Immediately many new presses were set up, and a host of little news-sheets began to be published--timidly at first, it is true, for in the reign of Charles II. the judges--then mere creatures of the Crown--had declared it to be a common law misdemeanour to publish political

intelligence without the Royal licence, and printers were in doubt how far this would still be held law ; but no prosecutions taking place, they grew bolder as time went on, and printing presses and newspapers multiplied throughout the land.

CHAPTER III.

THE LAWS OF FORMER TIMES—(*continued*).

THE freed Press did not long escape legislative interference ; and, indeed, in a great measure it brought it on itself by its licentiousness. Libelling was so rife in 1696 that a Bill was introduced into the House of Commons to re-impose a State censorship, but it was not proceeded with.¹ In 1701 it was proposed to check the scurrilous little newspapers and pamphlets by taxing every sheet, but this Bill was also thrown out. Authors being grievously pirated, a law was necessary for their protection, and accordingly the first Copyright Act was, as we have seen, passed in 1709.² Then the exigencies of the great Continental war in which this country became engaged required the raising of large sums of money, and many new taxes were imposed, one of them being a duty on paper whether home-made or imported. This was in 1711 (by the Act 10 Ann., c. 19). It had been proposed as long ago as 1696 to levy a duty³ on paper, but owing to the remonstrances of the paper-makers the proposal was not then carried into effect. This Act of 1711 accomplished, too, what had been attempted in 1701 : it imposed a tax upon every newspaper and pamphlet in addition to the paper duties ;⁴ it also imposed a duty of twelve pence on every advertisement contained in a paper published weekly or oftener. To ensure payment it was provided (by section 113) that every sheet printed should bear on it the name of its printer, the penalty for omission being £20.

These taxes had naturally a most repressive effect on the

¹ "Parl. Hist.," v. 1163.

² 8 Ann., c. 21 (c. 19 Ruff.).

Of twenty per cent.

⁴ The duties were one halfpenny for each half-sheet of paper used, except that in the case of pamphlets consisting of more than one whole sheet, the rate was 2s. for every sheet of paper used in a single copy of the work, whatever the number printed.

printing trade. They were imposed originally for thirty-two years, but were continued by subsequent statutes. Thus the Paper duty, which was increased in 1820, and reduced again afterwards, was not finally abolished till 1861.⁵ The duty on pamphlets continued till 1833, when it was repealed by 3 & 4 Wm. IV., c. 23. The Advertisement duty was repealed only in 1855. In 1815, by the Act 55 Geo. III., c. 185, it was fixed at no less than 3s. 6d. per announcement; but in 1833, by the statute before cited, it was reduced to 1s. 6d., at which rate it continued till its abolition. The Newspaper duty was increased in 1804 (by the statute 44 Geo. III., c. 98) to 3½d. per copy for newspapers whose size did not exceed one sheet of demy, a further sum of 3½d. per sheet being payable in the case of any larger paper. It was also forbidden to print newspapers on paper larger than 32 inches long by 22 inches wide. This provision was repealed in 1825 by the statute 6 Geo. IV., c. 119, which permitted the use of paper of any size, and recognised supplements. The duty had in the meantime, by the Act of 1815, been raised to 4d., and so it continued till 1836, when it was reduced to 1d. per sheet for newspapers printed on sheets having a superficies of letterpress on one side not exceeding 1,530 square inches, an allowance increased to 2,295 square inches in 1853. In 1855 the compulsory duty on newspapers was abolished, the stamp, however, being still continued for postal purposes. It was finally abolished in 1870, when the halfpenny postage rate was adopted.

It is to be observed that the Art of Printing was free from taxation until 1712, and has again been so since 1861. It is scarcely to be imagined that any Government will again impose what have been very justly termed taxes on knowledge.

Between the lapse of the Licensing Act in 1695 and the year 1798 there was no registration of printing-offices, all

⁵ From 1836 to 1861 it was 1½d. per lb.

persons having the power to open them as and where they pleased. In 1712, it is true, the House of Commons, owing to the continued prevalence of libels, passed a resolution in favour of their registration, but nothing came of it. In 1798, however, in consequence of the disturbances in this country brought on by the French Revolution, an Act was passed (38 Geo. III., c. 78) requiring every newspaper to be registered at the Stamp Office, with the names of its proprietors, printers, and publishers, and the place of printing and publication ; the names and addresses of the printers and publishers of newspapers were required to be printed on every paper issued, and within six days of publication a copy of each issue was to be sent to the Stamp Office to be filed ; provisions were also made for discovering the names and addresses of all concerned in the issue of a newspaper. By a subsequent statute (60 Geo. III., c. 9) the proprietor of a newspaper had to enter into a recognisance to the extent of £300 (increased by 6 & 7 Wm. IV., c. 76, to £400) to pay any fines imposed. The Act of 1798 was repealed in 1836 by 6 & 7 Wm. IV., c. 76, which, however, re-enacted many of its chief provisions.

In 1799 the system of registration was extended. By 39 Geo. III., c. 79, passed to put down sedition then rife, all printers, letter-founders, and makers and sellers of types and printing presses were to be registered with the clerk of the peace ; vendors of types were to keep a list of the persons to whom they sold them, and were to produce such list when called upon to do so ; the name and abode of the printer was to be printed on every book or paper ; printers were to keep a copy of every paper printed by them, and to write thereon the name of the person who employed them to print it ; persons parting with or exposing to view a printed paper without the name of the printer thereon became liable to punishment, and justices of the peace might empower an officer to search for and seize suspected presses. This Act was amended by subsequent statutes, but many of its provisions continued to be law till 1869, and, indeed, some of them are law to this day.

The penalty for issuing any printed book or sheet without the name and address of the printer thereon was fixed at no less than £20 per copy, and any one might sue for the same. Some men made a trade of doing so ; one deliberately laid a trap for printers by going about asking them to print a new title-page for an Elzevir, which of course he did not desire to bear the actual printer's name, and so grievous were the penalties hanging over the heads of printers that they procured the passing of an Act in 1811 (51 Geo. III., c. 65) limiting the penalty payable in respect of any one book or paper to £500, and empowering justices to mitigate the penalty to £5 per copy ; it also gave printers a right of appeal.⁶ In 1839 was passed a further Act (2 & 3 Vict., c. 12) which, reciting that the law above mentioned had given occasion to many vexatious proceedings at the instance of common informers, forbade any prosecution for penalties under it except by the law officers of the Crown, and altered the penalty to one *not exceeding* £5 per copy—a most material change. Power was given also to put an end to certain proceedings for penalties then pending in the courts.

In this way the law continued till 1869, when it was resolved to consolidate all the enactments thought proper to be kept in force and to repeal all others, and accordingly in that year was passed the 32 & 33 Vict., c. 24, the second schedule to which contains almost all the laws not specially regulating printers.

The difference between the conditions under which printing is now exercised and those formerly existing may best be brought to mind by considering the legal obligations of a printer, say sixty years ago. Upon commencing business he must make a declaration of his name and abode and of the situation of his printing-office, and file it with the clerk of the peace, who would thereupon grant him a certificate.⁷ His

⁶ A previous statute of indemnity to certain printers who had inadvertently incurred penalties had been passed in 1809 (49 Geo. III., c. 69.)

⁷ This was required down to 1869.

type and presses would be purchased from persons similarly certificated. Every scrap of paper he used was heavily taxed. If he printed anything (except an address card) without putting his name on it, any man in the street might commence proceedings against him, and he would be bound to pay at least £5, and possibly £20 per copy, the maximum penalty in respect of each work being the small sum of £500. He was bound to keep a copy of everything he printed, and to write on it the name and address of the person for whom he printed it, and must produce such copy to a justice of the peace when called upon at any time within six months. Should he print anything libellous or savouring of sedition—and a great many things which are circulated without hindrance at the present day would have been considered seditious—he would find the judges ready to inflict severe punishment upon him. If he printed an Almanack he must pay a duty of 1s. 3d. on every copy. For every sheet in every small pamphlet he printed he must pay a duty of 3s., every copy having to be taken to the Stamp Office to be stamped, and woe betide him if he allowed any such things to go out of his custody before they were stamped. Should he purpose starting a newspaper he must make an affidavit of its title, its proprietors, publishers, and printers, with their names, addresses, and descriptions, and file it at the Stamp Office, and he must also enter into recognisances in the sum of £300 to pay any fines that might be imposed on him. Then, being at liberty to issue his paper, he must take every copy to the Stamp Office, or print it on stamped paper, the duty being 4d. per sheet. He must also file a copy of each issue at the Stamp Office, and within 30 days pay a duty of 3s. 6d. on every advertisement contained in it; the penalties payable on any transgression or omission being very severe.

Such was the state of the law in the days of our grandfathers.

CHAPTER IV.

EXISTING LAWS SPECIALLY AFFECTING PRINTERS.

WE have now to see what are the laws which affect printers at the present day. Some of these concern printers exclusively ; others, such as the Factory Acts, concern them simply as members of a certain class of citizens ; while most laws affect them neither more nor less than they affect all other members of the State. In the present chapter we shall consider, first, who may be printers, and then we shall deal with those laws which exclusively or specially have regard to them.

Who may be Printers.—Any person, whether man or woman, whether of full age or under age, single or married, native born or alien, may set up a printing-office in this country. No notice is required to be given to any official, no registration⁸ is to be effected, nor is there any licence to be taken out.

Married women could always set up in business in the City of London by virtue of the City custom ; and now, by the Married Women's Property Act, 1882 (45 & 46 Vic., c. 75), every married woman has the same power of making contracts and incurring debts as a single woman, and a married woman who carries on a trade separately from her husband may be made a bankrupt.

As regards persons under twenty-one years of age, or "infants" as they are called, there is no legal impediment to their setting up in business, as we have stated ; but as such persons are incapable of entering into valid contracts, except for "necessaries," it behoves persons dealing with them to be exceedingly cautious, and it is rarely safe to sell goods to them or to do work for them on credit.

Certain duties are imposed on printers by statute. These are comprised in the schedule to the Act of 1869 before

⁸ This does not apply to the printers and publishers of newspapers, as to whom see *post*.

referred to (32 & 33 Vic., c. 24), and relate to (1) *Imprint* and (2) the *Preservation of Copies*.

Imprint.—A printer must place on every work he prints, except such as are hereafter mentioned, a statement of his name and address, on pain of being fined a sum not exceeding £5 per copy.

The following works need not bear an imprint, all others must do so: Impressions of engravings, address cards, business cards, price lists, lists or catalogues of goods dealt in or for sale, catalogues of estates for sale and the like, if printed by letterpress,⁹ bank notes, bills of exchange, promissory notes, bonds or securities for the payment of money, bills of lading, policies of insurance, letters of attorney, deeds, agreements, transfers or assignments of stocks or shares, receipts, law proceedings, and papers printed by authority of Parliament, or of any public board or public office.

The words of the statutes are as follows :—

“ Every person who shall print any paper or book whatsoever which shall be meant to be published or dispersed, and who shall not print upon the front of every such paper, if the same shall be printed on one side only, or upon the first or last leaf of every paper or book which shall consist of more than one leaf, in legible characters, his or her name and usual place of abode or business, and every person who shall publish or disperse, or assist in publishing or dispersing, any printed paper or book on which the name and place of abode of the person printing the same shall not be printed as aforesaid, shall for every copy of such paper so printed by him or her forfeit a sum not more than five pounds: Provided always, that nothing herein contained shall be construed to impose any penalty upon any person for printing any paper excepted out

⁹ Apparently, if these jobs (address cards, &c.) are printed by any process other than letterpress, they must bear imprints.

of the operation of the said Act of the thirty-ninth year of King George the Third, chapter seventy-nine, either in the said Act or by any Act made for the amendment thereof." (2 & 3 Vic., c. 12, sect. 2.)

"Nothing in this Act contained shall extend or be construed to extend to any papers printed by the authority and for the use of either House of Parliament." (39 Geo. III., c. 79, sect. 28.)

"Nothing herein contained shall extend to the impression of any engraving, or to the printing by letterpress of the name, or the name and address, or business or profession, of any person, and the articles in which he deals, or to any papers for the sale of estates or goods by auction or otherwise." (39 Geo. III., c. 79, sect. 31.)

"Nothing in the said Act of the thirty-ninth year of King George the Third, chapter seventy-nine, or in this Act contained shall extend or be construed to extend to require the name and residence of the printer to be printed upon any bank note, or bank post bill of the Governor and Company of the Bank of England, upon any bill of exchange or promissory note, or upon any bond or other security for payment of money, or upon any bill of lading, policy of insurance, letter of attorney, deed, or agreement, or upon any transfer or assignment of any public stocks, funds, or other securities, or upon any transfer or assignment of the stocks of any public corporation or company authorised or sanctioned by Act of Parliament, or upon any dividend warrant of or for any such public or other stocks, funds, or securities, or upon any receipt for money or goods, or upon any proceeding in any court of law or equity, or in any inferior court, warrant, order, or other papers printed by the authority of any public board or public officer in the execution of the duties of their respective offices, notwithstanding the whole or any part of the said several securities, instruments,

proceedings, matters, and things aforesaid shall have been or shall be printed." (51 Geo. III., c. 65, sect. 3.)

"Printed at the Pitt Press, Cambridge," "Printed at the University Press, Oxford," are sufficient imprints for any books or papers printed at these establishments. (2 & 3 Vic., c. 12, sect. 3.)

It has become the fashion of late years to discard the imprint from many jobs, such as programmes, bills of fare, and the like. The omission of it, however, is contrary to law, and renders the printer liable to the penalty above stated. Though there is, for the reason to be mentioned immediately, no risk of the penalty being sued for in ordinary cases, there would seem to be no reason why the law should not be observed, and, in fact, instead of the imprint being a hardship on printers, it affords them a gratuitous advertisement, which it might be thought they would not willingly forego. The maximum penalty for omitting the imprint from any work on which it ought to be placed, not being an election bill, is £5 per copy. This penalty can only be sued for by or in the name of the Attorney or Solicitor General in England, or the Queen's Advocate in Scotland. (2 & 3 Vic., c. 12, sect. 3.)

With regard to bills or posters relating to elections, a very serious penalty is incurred by any printer who omits to place his imprint upon them. The 18th Section of the Corrupt Practices Act, 1883 (46 & 47 Vic., c. 51), provides as follows :—

"Every bill, placard, or poster having reference to an election shall bear upon the face thereof the name and address of the printer and publisher thereof ; and any person printing, publishing, or posting, or causing to be printed, published, or posted, any such bill, placard, or poster as aforesaid, which fails to bear upon the face thereof the name and address of the printer and publisher, shall, if he is the candidate, or

the election agent of the candidate, be guilty of an illegal practice, and if he is not the candidate, or the election agent of a candidate, shall be liable on summary conviction to a fine not exceeding one hundred pounds."

Preserving Copies.—A printer is bound to preserve for six months a copy of every work he prints (except works of the nature referred to below), and to write or print on such copy the name and address of the person who employed him to print it, and he must, during the six months, produce such copy to any justice of the peace requiring to see it. Penalty, £20.

The excepted works are parliamentary papers, engravings, address and business cards and circulars, and papers relating to the sale of estates or of goods.

The words of the statute are as follows:—

"Every person who shall print any paper for hire, reward, gain, or profit, shall carefully preserve and keep one copy (at least) of every paper so printed by him or her, on which he or she shall write, or cause to be written or printed, in fair and legible characters, the name and place of abode of the person or persons by whom he or she shall be employed to print the same; and every person printing any paper for hire, reward, gain, or profit, who shall omit or neglect to write, or cause to be written or printed as aforesaid, the name and place of his or her employer on one of such printed papers, or to keep or preserve the same for the space of six calendar months next after the printing thereof, or to produce and show the same to any justice of the peace who, within the said space of six calendar months, shall require to see the same, shall, for every such omission, neglect, or refusal, forfeit and lose the sum of twenty pounds." (39 Geo. III., c. 79, sect. 29.)

The penalty in this case is a fixed one, and it cannot therefore be reduced by the magistrate. It may be recovered before any justice or justices of the peace of the

place where it is incurred, or where the defendant happens to be, but it must be sued for within three months after it is incurred, and further, only the Law Officers of the Crown can sue for it, notwithstanding the existence of a clause apparently permitting any common informer to take half the penalty for his own use.

The words of the statutes are as follows :—

“No person shall be prosecuted or sued for any penalty imposed by this Act unless such prosecution shall be commenced, or such action shall be brought, within three calendar months next after such penalty shall have been incurred.” (39 Geo. III., sect. 34.)

“And any pecuniary penalty imposed by this Act, and not exceeding the sum of twenty pounds, shall and may be recovered before any justice or justices of the peace for the county, stewartry, riding, division, city, town, or place in which the same shall be incurred, or the person having incurred the same shall happen to be, in a summary way.” (Sect. 35.)

“All pecuniary penalties hereinbefore imposed by this Act shall, when recovered in a summary way before any justice, be applied and disposed of in manner hereinafter mentioned; that is to say, one moiety thereof to the informer before any justice, and the other moiety thereof to His Majesty, his heirs and successors.” (Sect. 36.)¹⁰

“It shall not be lawful for any person or persons to commence, prosecute, enter, or file, or cause or procure to be commenced, prosecuted, entered, or filed, any action, bill, plaint, or information in any of Her Majesty’s courts, or before any justice or justices of the peace, against any person or persons for the recovery of any fine which may hereafter be incurred

¹⁰ It is difficult to understand why this clause was retained by the Act of 1869, seeing that the clause next following virtually repeals it.

under the provisions of the Act of the thirty-ninth year of King George the Third, chapter seventy-nine, set out in this Act,¹¹ unless the same be commenced, prosecuted, entered, or filed in the name of Her Majesty's Attorney-General or Solicitor-General in England, or Her Majesty's Advocate in Scotland, and every action, bill, plaint, or information which shall be commenced, prosecuted, entered, or filed in the name or names of any other person or persons than is in that behalf before mentioned, and every proceeding thereupon had, shall be null and void to all intents and purposes." (9 & 10 Vict., c. 33, sect. 1.)

Apart from the laws specially affecting newspapers, which will be dealt with in the next chapter, the above are the only laws requiring printers, as such, to *do* anything. There are many enjoining them, in common with others, to abstain from certain acts. Of such of these as closely concern printers, *e.g.*, the law of libel, copyright, &c., we shall treat hereafter.

¹¹ *I.e.*, the penalty of £20 imposed by section 29 of that Act, set out above.

CHAPTER V.

THE REGISTRATION OF NEWSPAPERS.

THE Newspaper Libel and Registration Act, 1881 (44 & 45 Vict., c. 60), reimposed on newspaper proprietors duties of registering from which they had been free since 1869. It was a kind of compromise with the newspaper proprietors, who were relieved from certain liabilities for libel on condition that they submitted to have their names and addresses registered, so that any person wishing to take proceedings against them might have no difficulty in discovering whom he ought to sue. The Act, which does not apply to Scotland, consists of twenty sections and two schedules. Section 1 is the interpretation clause, defining for the purposes of the Act the words and phrases "registrar," "registry office," "newspaper," "place of residence," "occupation," and "proprietor." Sections 2, 3, 4, 5, and 6 amend the law relating to libels in newspapers, and will be dealt with when we come to consider the Law of Libel. The remainder of the statute relates to the registration of newspapers.

What are Newspapers.—There are many journals and magazines which figure in the various newspaper directories as "newspapers" which are not newspapers within the meaning of this Act. It is important to bear in mind that whether as respects the clauses relating to libel or as respects those requiring registration, the only papers to which the Act applies are those that fulfil the definition of the word "newspaper" in Section 1.

For the purposes of the Act, then, the word "newspaper" is declared to mean "any paper containing public news, intelligence, or occurrences, or any remarks or observations therein printed for sale and published in England or Ireland periodically, or in parts or numbers at intervals not exceeding twenty-six days between the publication of any two such papers, parts, or numbers. Also

any paper printed in order to be dispersed and made public, weekly or oftener, or at intervals not exceeding twenty-six days, containing only or principally advertisements."

It may, perhaps, be thought by the reader that the word "therein" in the above definition is a misprint for "thereon;" such, however, is not the case. The Act in many places displays instances of bad drafting or want of care in the incorporation of amendments in the Bill carried in Committee of either House of Parliament. The words "weekly or oftener, or at intervals not exceeding twenty-six days," are a sufficient justification for this statement. Obviously the words "weekly or oftener or" ought to have been struck out, though their presence does no harm.

The Registries.—The registries are the offices of the registrars of joint stock companies in England and Ireland respectively, or such other as the Board of Trade may from time to time appoint (Sect. 1). At present the Registry for English Newspapers is the Office of the Registrar of Joint Stock Companies, Somerset House, London; that for Irish Newspapers is the Office of the Registrar of Joint Stock Companies in Dublin. If any change is ever made it will be notified officially, doubtless in the London or Dublin *Gazette*, as the case may be.

What must be Registered.—The Act (Sect. 9) requires that the following returns shall be made to the Registry annually :—

- "1. The title of the newspaper.
- "2. The names of all the proprietors (*a*) of such newspapers, together with their respective occupations (*b*), places of business (if any), and places of residence."

The return is to be made in the form given in Schedule A to the Act, which is as follows :—

"SCHEDULE A.

"Return made pursuant to the Newspaper Libel and Registration Act, 1881.

Title of the Newspaper.	Names of the Proprietors.	Occupations of the Proprietors.	Places of Business (if any) of the Proprietors.	Places of Residence of the Proprietors."
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(a) "Proprietors."—The word proprietor is by Section 1 defined to "mean and include as well the sole proprietor of any newspaper as also, in case of a divided proprietorship, the persons who, as partners or otherwise, represent and are responsible for any share or interest in the newspaper as between themselves and the persons in like manner representing or responsible for the other shares or interests therein and no other person."

Although the words of the statute, as quoted above, are "the names of *all* the proprietors," yet if there be a large number of proprietors or other special circumstances, application may be made through the Registry to the Board of Trade for leave to register some "representative proprietors," Section 7 providing as follows:—

"7. Where, in the opinion of the Board of Trade, inconvenience would arise or be caused in any case from the registry of the names of all the proprietors of the newspaper (either owing to minority, coverture, absence from the United Kingdom, minute subdivision of shares, or other special circumstances), it shall be lawful for the Board of Trade to authorise the registration of such newspaper in the name or names of one or more responsible 'representative proprietors.'"

Further, where the newspaper is owned by a company registered under the Companies Acts, 1862 to 1879, it is not to be registered under this Newspaper Act at all (Sect. 18).

(b) "Occupations."—The Interpretation Clause (Section 1) provides that "the word 'occupation,'" when applied to any person, "shall mean his trade or following, and if none, then his rank or usual title, as esquire, gentleman."

Who must Register.—The duty of making the return is cast on "the printers and publishers for the time being of

every newspaper," *i.e.*, *primâ facie* on the persons named in the imprint.

When they must Register.—The returns required must be made every year in the month of July (Sect. 9).

If by the end of August the annual return is not made, each printer and publisher of the newspaper in default may be convicted before magistrates in a summary way, and on conviction will be liable to a penalty not exceeding £25, and to an order to make the return within a time to be specified by the magistrates (Sect. 10).

There is no provision for the registration of new newspapers, and therefore if a paper be started, say, in September, no registration need be made till the following July.

Transfers.—"Any party to a transfer, or transmission, or dealing with any share of, or interest in, any newspaper, whereby any person ceases to be a proprietor, or any new proprietor is introduced, may at any time make or cause to be made to the Registry Office a return, according to Schedule B hereunto annexed, and containing the particulars therein set forth." (Sect. 11.)

Schedule B is as follows :—

"Return made pursuant to the Newspaper Libel and Registration Act, 1881.

Title of Newspaper.	Names of Persons who cease to be Proprietors.	Names of Persons who become Proprietors.	Occupations of new Proprietors.	Places of Business (if any) of New Proprietors.	Places of Residence of New Proprietors."
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False Returns.—Any person wilfully making a false or incomplete return is liable to a penalty not exceeding £100 (Sect. 12).

Searches of the Register.—The returns are to be entered in a book kept at the Registry and called "The Register of Newspaper Proprietors," and any one who pleases may, on payment of the proper fees, inspect the register and obtain certified copies of any entry therein (Sect. 13).

Fees.—The following fees are payable :—

On registering for the first time	...	...	10s.
On every subsequent return	...	...	5s.
For inspection of Register	...	...	1s.
For a copy of a return	...	...	1s.

and a further fee of fourpence per folio (72 words) if the copy exceeds three folios.

For registering for the first time any "Representative Proprietor" 20s.

Rules.—The following Rules are now in force, and are annexed to the Schedule of Fees issued at the Registry :—

"Where it is desired to make a return of 'Representative Proprietors' under Sect. 7, a statement should be sent to the Registrar setting forth the circumstances which render it inconvenient to register the names of all the proprietors, and giving such information as will show that the proposed representatives are well able to meet any claims that may arise for libel or otherwise in connection with the management of the paper.

"The prescribed forms on which the Returns are to be made will be sent, either stamped with the requisite fee stamps or unstamped, on application to the Registrar, Companies Registration Office, Somerset House, London, W.C. No charge is made for the forms, but when stamped forms are required a postal order for the amount of the fee must accompany the application.

A separate return will be required for each paper."

Official Copies of Entries are to be received in evidence without further proof, "and every certified copy or extract shall in all proceedings, civil or criminal, be accepted as sufficient *prima facie* evidence of all matters and things thereby appearing, unless and until the contrary thereof be shown" (Sect. 15).

Proceedings to Recover Penalties are to be taken before magistrates under the Summary Jurisdiction Act, 1879 ;

that is to say, the complainant procures the defendant to be summoned before the bench to answer to the charge alleged. Any one may prefer the charge, the Act not specifying any public prosecutor.

There have as yet been but two cases under it—one before the magistrates at Rugby in January, 1884, in which the complainant was Mr. J. W. Kenning, proprietor of the *Midland Times*, and the defendant was Mr. James Hope-well, printer and publisher of the *Rugby Christian Observer*. Here the defence was that the defendant's paper had ceased to exist before the end of August, the month of grace allowed by the Act, and that it was useless to register it when it was dead. The defendant was, however, convicted and fined one shilling. The conviction was quite right, as the paper was issued throughout July, the month when the return ought in strictness to have been made. The other case was that brought on the 2nd of January, 1884, before the magistrates at Maidstone against Mr. A. Simmons, printer and publisher of the *Kent and Sussex Times*, which is published in that town. Here the objection was taken on behalf of the defendant that a private person could not lay the information—that it was the duty of the Registrar of Newspapers to institute proceedings. The point was not decided, and we have already intimated that we think the objection untenable. Then it was argued that the offence had been committed at Somerset House, and consequently out of the jurisdiction of the Maidstone court; to which it was replied that application for a summons had been made to the magistrate at Bow Street, within whose district Somerset House lies, and that he had refused it on the ground of want of jurisdiction. The Maidstone justices, notwithstanding this, dismissed the case on the ground that *they* had no jurisdiction to hear it. The opinion of the writer is that the summons ought to have been granted at Bow Street.

CHAPTER VI.

MISCELLANEOUS STATUTORY PROVISIONS.

BESIDES the Newspaper Libel and Registration Act, there are some few statutory enactments closely concerning newspaper proprietors and printers which may be conveniently disposed of here. These are the Post Office Acts, and the various provisions concerning Advertisements for the Return of Stolen Property, Betting Advertisements, and Advertisements of Lotteries.

1. *The Post Office Acts.*

By the Post Office Act, 1870 (33 & 34 Vict., c. 79), an end was put to the old newspaper stamps, and certain papers were permitted to be carried through the post at halfpenny rates. We shall give here only those provisions which are now material.

Definition of a Newspaper for Postal Purposes:—

Sect. 6. “Any publication coming within the following description shall, for the purposes of this Act, be deemed a newspaper, that is to say, any publication consisting wholly or in great part of political or other news, or of articles relating thereto, or to other current topics, with or without advertisements; subject to these conditions:—

“That it be printed and published in the United Kingdom;

“That it be published in numbers at intervals of not more than seven days;

“*That it be printed on a sheet or sheets unstitched;*

“That it have the full title and date of publication printed at the top of the first page, and the whole or part of the title and the date of publication printed at the top of every subsequent page.

“And the following shall, for the purposes of this Act, be deemed a supplement to a newspaper, that is to say, a publication consisting wholly or in great part of

matter like that of a newspaper, or of advertisements, printed on a sheet or sheets, or a piece or pieces of paper, unstitched, or consisting wholly or in part of engravings, prints, or lithographs illustrative of articles in the newspaper ; such publication in every case being published with the newspaper, and having the title and date of publication of the newspaper printed at the top of every page, or at the top of every sheet or side on which any such engraving, print, or lithograph appears."

(By 44 & 45 Vict., c. 19, so much of this section of the Post Office Act as requires that a publication in order to be a newspaper for the purposes of that Act shall be printed on a sheet or sheets, unstitched, is repealed, but such repeal does not extend to a supplement to a newspaper. The repealed part has been printed above in italics.)

Registration at the Post Office:—

Sect. 7. "The proprietor or printer of any newspaper within the description aforesaid, and the proprietor or printer of any publication which, regard being had to the proportion of advertisements to other matter therein, is not within the description aforesaid, but which was stamped as a newspaper before the passing of the Act lastly mentioned in the first schedule to this Act,¹² may register it at the General Post Office in London at such time in each year and in such form and with such particulars as the Postmaster-General from time to time directs, paying on each registration such fee not exceeding five shillings as the Postmaster-General, with the approval of the Treasury, from time to time directs.

"The Postmaster-General may from time to time revise the register and remove therefrom any publication not being a newspaper.

"The decision of the Postmaster-General on the admis-

¹² *I.e.*, before the 15th June, 1855.

sion to or removal from the register of a publication shall be final, save that the Treasury may, if they think fit, on the application of any person interested, reverse or modify the decision, and order accordingly. Any publication for the time being on the register shall, for the purposes of this Act, be deemed a registered newspaper."

Rates of Postage :—

Sect. 8. "From and after the 30th day of September, 1870, registered newspapers, book packets, pattern or sample packets, and post cards may be sent by post between places in the United Kingdom at the following rates of postage :—

"On a registered newspaper, with or without a supplement or supplements—one halfpenny.

"On each registered newspaper in a packet of two or more, with or without a supplement or supplements—one halfpenny.

"On a book packet, or pattern, or sample packet, if not exceeding two ounces in weight—one halfpenny. If exceeding two ounces in weight, for the first two ounces and for every additional two ounces or fractional part of two ounces—one halfpenny.

"On a post card—one halfpenny.

"Provided that a packet of two or more registered newspapers with or without a supplement or supplements shall not be liable under this section to a higher rate of postage than the rate chargeable on a book packet of the same weight."

Powers of the Postmaster-General :—

Sect. 9. "The Postmaster-General may from time to time, with the approval of the Treasury, make, in relation respectively to registered newspapers, book packets, pattern or sample packets, and post cards, sent by post, such regulations as he thinks fit, for all or any of the following purposes :—

- “For prescribing and regulating the times and modes of posting and delivery :
- “For prescribing prepayment and regulating the mode thereof :
- “For regulating the affixing of postage stamps :
- “For prescribing and regulating the payment again of postage in case of redirection :
- “For regulating dimensions and maximum weight of packets :
- “For regulating the nature and form of covers :
- “For prohibiting or restricting the printing or writing of marks or communications or words :
- “For prohibiting inclosures ; and such other regulations as from time to time seem expedient for the better execution of this Act.”¹³

Sect. 14. “If a question arises whether any publication, not being a registered newspaper, is a newspaper or a supplement, or whether any packet is a book packet or pattern or sample packet, within this Act or any Treasury warrant or Post Office regulations, the decision thereon of the Postmaster-General shall be final, save that the Treasury may, if they think fit, on the application of any person interested, reverse or modify the decision, and order accordingly.”

Sect. 20. “The Postmaster-General may from time to time, with the approval of the Treasury, make such regulations as he thinks fit, for preventing the sending or delivery by post of indecent or obscene prints, paintings, photographs, lithographs, engravings, books, or cards, or of other indecent or obscene articles, or of letters, newspapers, supplements, publications, packets, or post cards, having thereon, or on the covers thereof, any words, marks, or designs of an indecent, obscene, libellous, or grossly offensive character.”

¹³ These regulations are to be found in the “Post Office Guide,” an official publication issued quarterly, and purchaseable at post offices or of Her Majesty’s Printers.

Other existing Post Office Acts affecting printers and newspaper proprietors are :—

7 Wm. IV. and 1 Vict., c. 36, sect. 5, whereby persons enclosing in newspapers, letters, papers, or things, or writing unauthorised communications or marks on them or their covers, are liable to treble postage, the packet being considered as a letter, or at the option of the Postmaster-General, to be prosecuted as for a misdemeanour, and to suffer punishment accordingly.

3 & 4 Vict., c. 96, of which section 12 authorises the use of stamped covers, and section 43 allows newspapers to be sent by post, but does not make it compulsory so to send them.

31 & 32 Vict., c. 110 (The Telegraph Act, 1868), of which section 16 empowers the Postmaster-General to make special contracts with newspaper proprietors, &c., for the transmission of telegraphs at low rates, and for the use of private wires.

38 Vict., c. 22 (The Post Office Act, 1875), which authorises the Postmaster-General to fix rates and to make regulations.

2. *Advertisements for Stolen Property.*

By the Larceny Act, 1861 (24 & 25 Vict., c. 96), s. 102 :
“Whoever shall publicly advertise a reward for the return of any property whatsoever which shall have been stolen or lost, and shall in such advertisement use any words purporting that no questions will be asked, or shall make use of any words in any public advertisement purporting that a reward will be given or paid for any property which shall have been stolen or lost, without seizing or making any inquiry after the person producing such property, or shall promise or offer in any such public advertisement to return to any pawnbroker or other person who may have bought or advanced money by way of loan upon any property stolen or lost the money so paid or advanced, or any

other sum of money or reward for the return of such property, or shall print or publish any such advertisement, shall forfeit the sum of fifty pounds for every such offence to any person who will sue for the same by action of debt to be recovered with full costs of suit."

It will be observed that the printer of the advertisement is liable for the penalty to the same extent as his employer, and so is the publisher. So that if A gets B to print such an advertisement and C to post it on a hoarding, any person who reads it may sue A, B, and C in separate actions, and recover from each £50, with full costs of suit.

It will also be observed that the sum of £50 is fixed, and that there is no power in the Court to reduce it.

Printers and publishers of *newspapers* are protected from vexatious actions under the above statute by the 33 & 34 Vict., c. 65, section 3 of which enacts that "every action against the printer or publisher of a newspaper to recover a forfeiture under s. 102 of the Larceny Act, 1861, shall be brought within six months after the forfeiture is incurred, and no such action against the printer or publisher of a newspaper shall be brought unless the assent in writing of Her Majesty's Attorney-General or Solicitor-General for England, if the action is brought in England, or for Ireland, if the action is brought in Ireland, has been first obtained to the bringing of such action." Sect. 2 of the same statute provides that the term "newspaper" in the Act "means a newspaper as defined for the purposes of the Acts for the time being in force relating to the carriage of newspapers by post," *i.e.*, at present, as defined by the Post Office Act, 1870, sect. 6, *supra*. Unless, therefore, a periodical publication comes within that definition, its printer and publisher are at the mercy of any plaintiff, however innocently the advertisement may have been inserted.

3. Betting Advertisements.

The statute relating to Betting Advertisements is the 37 Vict., c. 15, sect. 1 of which provides that it shall be

construed as one with the 16 & 17 Vict., c. 119, entitled "An Act for the Suppression of Betting Houses," therein after called "the principal Act."

Sect. 3 provides as follows :—

"Where any letter, circular, telegram, placard, handbill, or advertisement is sent, exhibited, or published—

"(1.) Whereby it is made to appear that any person, either in the United Kingdom or elsewhere, will on application give information or advice for the purpose of or with respect to any such bet or wager, or any such event or contingency as is mentioned in the principal Act, or will make on behalf of any other person any such bet or wager as is mentioned in the principal Act ; or,

"(2.) With intent to induce any person to apply to any house, office, room, or place, or to any person, with the view of obtaining information or advice for the purpose of any such bet or wager, or with respect to any such event or contingency as is mentioned in the principal Act ; or,

"(3.) Inviting any person to make or take any share in or in connection with any such bet or wager ; every person sending, exhibiting, or publishing, or causing the same to be sent, exhibited, or published, shall be subject to the penalties provided in the seventh section of the principal Act with respect to offences under that section."

The penalties are : On prosecution before justices of the peace, to be fined a sum not exceeding £30, and made to pay the costs of the prosecution ; and in default, or in the first instance if the justices shall think fit, to be imprisoned, with or without hard labour, for a maximum period of two calendar months.

The only advertisements struck at by this Act are advertisements of bets and wagers made in a house, office, room, or other place kept for the purpose of betting. This

was so decided by Mathew and Day, J.J., in *Cox v. Andrews*, 12 Q. B. Div., 126. In that case, which was heard in 1883, Cox was proprietor of the *Licensed Victualers' Gazette*, and in an issue of that paper had appeared the following paragraph: "To our Readers.—'Centaur' scored his first success of the season when he gave Knight of Burghley for the Lincoln Handicap last Tuesday. Our correspondent will use every effort to follow up his success, and those of our readers who want the most reliable and latest news from Northampton next week should not fail to avail themselves of 'Centaur's' wire finals, sent direct from the course. They may rely on having something as good for the two principal events next week as they had in Knight of Burghley last Tuesday. 'Centaur's' finals cost but half-a-crown each, or the two days' racing 5s., for which post-office orders or stamps must be sent to Mr. W. H. Cox," &c. Cox was convicted, and fined 10s.; but on appeal the conviction was quashed on the ground above stated.

4. *Lottery Advertisements.*

Lotteries are, by many statutes, made illegal in this country, and there are still in force two containing provisions against publishing information concerning them. These are set out below, and it is to be remarked that they apply to all lotteries, foreign as well as British. Art Unions, licensed under the 9 & 10 Vict., c. 48, are excepted from the general law, and newspaper proprietors will incur no penalty by inserting advertisements of them.

4 George IV., c. 60, sec. 41, provides:—

"That if any person or persons shall sell any ticket or tickets, chance or chances, share or shares of any ticket or tickets, chance or chances in any lottery or lotteries authorised by any foreign potentate or state, or to be drawn in any foreign country, or in any lottery, or lotteries, except such as are or shall be authorised by this or some other Act of Parliament to be sold, or shall publish any proposal or scheme for the sale of

any ticket or tickets, chance or chances, share or shares of any ticket or tickets, chance or chances except such lottery or lotteries as shall be authorised as aforesaid, such person or persons shall, for every such offence, forfeit and pay the sum of fifty pounds, and shall also be deemed a rogue and vagabond, or rogues and vagabonds, and shall be punished as such in the manner hereinafter directed."

6 & 7 William IV., c. 66, after reciting that

"The laws in force are insufficient to prevent the advertising of foreign and other illegal lotteries in this kingdom, and it is expedient to make further provision for that purpose": enacts, "that from and after the passing of this Act, if any person shall print or publish, or cause to be printed or published, any advertisement or other notice of or relating to the drawing or intended drawing of any foreign lottery, or of any lottery or lotteries, not authorised by some Act or Acts of Parliament; or if any person shall print or publish, or cause to be printed or published, any advertisement or other notice of or for the sale of any ticket or tickets, chance or chances, or of any share or shares of any ticket or tickets, chance or chances, of or in any such lottery or lotteries as aforesaid, or any advertisement or notice concerning or in any manner relating to any such lottery or lotteries, or any ticket, chance, or share, tickets, chances, or shares thereof or therein; every person so offending shall for every such offence forfeit the sum of fifty pounds, to be recovered, with full costs of suit, by action of debt, bill, plaint, or information in any of his majesty's courts of record in Westminster or Dublin respectively, or in the court of session in Scotland; one moiety thereof to the use of his majesty, his heirs and successors, and the other moiety thereof to the use of the person who shall inform or sue for the same,"

A subsequent statute (8 & 9 Vict., c. 74), passed because of some vexatious prosecutions of newspaper proprietors, provides that all penalties under the statute of William IV. shall go wholly to the Crown and shall be sued for in the name of the law officers of the Crown only.¹³

¹³ In 1883 the proprietors of the *Nottingham Evening Post* were prosecuted for having published an advertisement of a Christmas Lottery, but it being shown that it had been inserted by inadvertence, they were ordered to pay the costs only. (*Printers' Register*, February, 1883, p. 144.)

CHAPTER VII.

MASTER AND SERVANT.

1. *The Contract of Hiring and Service generally.*

THE relation of master and servant is formed by contract. The contract may be either express or implied. It is express when the terms of it are specifically arranged between the parties, whether by word of mouth or by reduction into writing. It is implied when there is no express contract and the circumstances are such that the law will presume it. A contract of hiring and service may be partly express and partly implied, inasmuch as every such contract is considered to be made subject to the customs of the trade, unless such customs are expressly excluded.

It is not necessary that the parties themselves should enter into the contract, they may make it by their agents duly authorised ; and in practice workmen in large establishments are generally engaged by the overseers and not by the principals.

A contract of hiring and service need not be in writing, except it be a contract not to be performed within a year from the time of making it : in this case it *must* be in writing.¹⁴ If, therefore, a person be engaged for a year commencing with the day on which the engagement is made, no writing is necessary ; but if he be engaged for any term exceeding a year, the contract must be in writing or it will be of no effect. So, too, it must if he be engaged for a year from to-morrow, or any other day subsequent to that on which the contract is made. But if the contract *can* be performed within the year, it is not necessary to reduce it into writing, notwithstanding that in fact it may not actually be so performed.¹⁵

¹⁴ Statute of Frauds (29 Ch. 2 c. 3), s. 4.

¹⁵ See Leake on Contracts, p. 255 ; *Brittain v. Rossiter*, 11 Q. B. D. 123.

An agreement in writing for the hiring of any operative printer requires no stamp, but if the person engaged is to occupy a position other than that of a "labourer, artificer, manufacturer, or menial servant," the contract must bear a sixpenny stamp.¹⁶ This may be denoted by an adhesive stamp cancelled by the person by whom the agreement is first executed¹⁷ (it is usual to sign over the stamp), or by a stamp impressed on the paper or parchment containing the agreement. This may be impressed either before signature or after. If the agreement is not stamped before it is executed, it may be stamped at any time within a fortnight of its date on payment of sixpence only; but if the fortnight is allowed to elapse, it cannot be stamped without paying a penalty, which may amount to as much as £11. In proper cases the Commissioners of Inland Revenue will, on being memorialised, reduce the penalty, but they very seldom remit it altogether. Agreements and other documents are stamped at Somerset House, London, and at some of the Inland Revenue offices in important provincial centres.

If a man engage another as his servant, and nothing be said as to the duration of the engagement, in the absence of any custom to the contrary and of any circumstances giving rise to a different presumption, the engagement is by law implied to be for a year.¹⁸ But there are very few cases in which custom or the surrounding circumstances do not limit the term. Thus, if a person be engaged as servant for an indefinite period at so much per week, the hiring is a weekly one. Here the payment of wages weekly is the circumstance inducing the inference that the engagement is by the week. As an instance of the term being limited by custom, we may mention the case of a domestic servant. It is well known that if a domestic servant be engaged, and

¹⁶ Stamp Act, 1870 (33 & 34 Vict., c. 97), Schedule.

¹⁷ Stamp Act, 1870 (33 & 34 Vict., c. 97), s. 36.

¹⁸ See Smith's Mercantile Law, ch. 8.

EX PARTE HUGHES AND KIMBER (LIMITED), RE THACKRAH.

This case, which involved a question of importance to the printing trade, was brought before the Court upon the hearing of an application by Messrs. Hughes and Kimber (Limited), of West Harding-street, Fetter-lane, for an order that the Official Receiver, the trustee under the bankruptcy of Joseph Henry Thackrah, should pay to the applicant the proceeds of the sale of machinery and type lent on hire by the applicant to the bankrupt.

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Mr. Arthur Powell appeared in support of the application; and Mr. Muir Mackenzie for the Official Receiver.

On March 31, 1887, the applicant supplied the bankrupt, a printer and stationer in Aldersgate-street, with printing machines, a gas engine, shafting, type, and sundries on the hire system. In October following the bankrupt, through his accountants, issued a circular to his creditors, and a receiving order followed. On May 28 last the Official Receiver sold the bankrupt's stock-in-trade with the machinery and type lent to him by the applicant, and the question to be determined by the Court was whether there existed in the printing trade such a universal custom of lending machinery and type on hire as to exclude the doctrine of reputed ownership in the event of the bankruptcy of the borrower. The Official Receiver claimed the proceeds of the machinery and type on the ground that they were in the order and disposition of the bankrupt at the date of the receiving order.

Mr. POWELL having briefly opened the case, called Mr. R. G. Kimber, who stated that he was secretary to the claimant company, and supplied the goods in question on the hire purchase system. The company had been in the habit since 1875 of lending goods on that system, and the custom was well known in the trade.

Cross-examined.—He thought the company let machinery before 1875. Type was not much in his way, but the company lent all kinds of printing materials.

Mr. Powrie, manager of the London business of Furnival and Co., Charterhouse-street, and Reddish, near Stockport, stated that he had been 20 years in the trade. His employers were in an extensive way of business, and were in the habit of letting out machinery on the hire system. His experience of the custom in question dated back about 11 years, when he became manager. Furnival and Co. dealt very little in type.

Mr. J. C. Hole, in the employ of Messrs. H. S. Cropper and Co., of Aldersgate-street, and Nottingham, and seven other witnesses also gave evidence in support of the custom in reference to machinery, but one witness only spoke of a custom to let type on hire.

Mr. MACKENZIE, for the Official Receiver, submitted that with regard to the type he had no case to answer. As to the machinery, he called Mr. Izard, of the firm of Izard, Dawe, and Izard, auctioneers, who stated that he had opportunities of making himself acquainted with the customs in different trades. He had effected many sales of printers' stock-in-trade. He had heard of a custom, to a limited extent, of hiring printing machinery, but the custom was not general. Otto gas engines were known to be on hire. With regard to these, there was a general custom.

Mr. H. E. Boot, printer, Old Bailey, and Mr. H. Harrild also gave evidence in opposition to the alleged custom. They admitted, however, that in isolated cases machinery was lent on the hire system.

MR. JUSTICE CAVE, in giving judgment yesterday, said he thought it was established by the evidence that there existed a practice in the trade of letting printing machinery on hire, but that the custom had not been proved with reference to the type. It was remarkable that every witness for the respondent knew that the custom existed. The evidence for the applicant was very strong, and was confirmed by that of the respondent. His Lordship therefore ordered the proceeds of the sale of the machinery (£92 18s. 4d.) to be paid to the applicant, but held that the Official Receiver was entitled, as trustee of the estate, to the proceeds (£44) of the type.

nothing be said about the term of the engagement, it exists for a month, and either party may put an end to it at the end of the month. If it continues to subsist after that period, it may be determined by either party giving a month's notice to the other on any day, or by the payment or forfeiture of a month's wages.

Some customs are so well known that they need not be proved in a court of law, judicial notice being taken of them. Of such the last-mentioned is an instance. But as a general rule customs must be proved by the evidence of witnesses who are conversant with them. Customs of the printing trade have nearly always to be proved; it would not be safe in any case to expect the Court to take judicial notice of them, unless indeed it is known that similar cases are constantly before it.

In London, in 1810, committees of the master printers and operative compositors respectively agreed to a scale of wages for time and piece work, and to rules fixing the hours and conditions of labour. These have since been modified, and as modified are now in force. All contracts between master printers and compositors in London are subject to these rules unless their operation is excluded either expressly or impliedly. It is impliedly excluded when masters have for years conducted their establishments in a manner inconsistent with such rules, and the fact that they have done so is well known. If a new or little-known London master printer were to engage a compositor, the rules would be imported into the contract, unless the compositor were distinctly informed at or before the time of the engagement that they would not be recognised.

The rules of the operative printers' trades-unions are not binding upon any master unless the latter has agreed that they shall be binding upon him. Such agreement may also be either express or implied. It will be implied if the master is in the habit of regulating his establishment according to such rules, or in other words, if his office is

his decision and give it to-day.
 The Lord Chief Justice, referring to what was said yesterday in this matter, said that he wished to have the matter definitely settled, and he would therefore rule now that, having regard to the finding of the jury, he ought not to allow the plaintiff his costs.

known in the trade to be a "society house;"¹⁹ and it is scarcely necessary to say that if on his applying for employment the servant is told that the house is a "society house," that will be sufficient to import into the contract all the rules and customs of the trade to which master printers who recognise the trades-unions are in the habit of conforming.

In like manner, rules made by an association of masters are not binding upon any man unless he expressly or impliedly consents to them.

The rules of many trades-unions prescribe that only those who have served an apprenticeship to the trade shall be employed as journeymen; that a man engaged in one branch of the trade shall do no work in another branch; that women and boys shall not do men's work; that the number of apprentices shall not bear more than a certain ratio to the number of journeymen, and so forth. As has been stated, these rules are binding only on those who consent to be bound by them; for the general rule of law is, that a master may employ whomsoever he pleases as his servant, in any capacity, on any terms, and at any rate of wages, provided the person he selects agrees to his terms. This rule is, however, subject to some statutory exceptions, the most important of which are those provided by the Factory Act, the Education Act, and the Truck Act, each of which will hereafter be briefly noticed.

Rules made by a master for defining or regulating his relations with his servants are binding on the latter only when brought to their knowledge, and they expressly or tacitly acquiesce in them. If the rules be posted up in a conspicuous place in the establishment where a person in the servant's position is most likely to see them, it is very strong evidence that he has seen them, and that he knows of their import. A servant may tacitly acquiesce in such

¹⁹ Printing-offices in which the rules of the trades-unions are not recognised are called "non-society houses," or (by the unionists) "unfair houses."

rules if, after knowing that they have been made, he goes on working and taking his wages without objecting to them. Wherever such rules are made and acquiesced in, they are imported into the contract of hiring and service.

Where a contract is reduced into writing it cannot be varied by extrinsic evidence of the intention of the parties. The Court will construe it as it finds it, incorporating, as before stated, customs of the trade or general usage, and implying what is by law implied from surrounding circumstances, but admitting no evidence of any "understanding" inconsistent with it. Thus, where there was a written contract between master and servant for an indefinite hiring at weekly wages, this was construed as importing a weekly hiring determinable at a week's notice, and evidence which was tendered to show that at the time of the signing of the contract the parties had agreed orally that the hiring should be for a year, was rejected.²⁰ So, too, though evidence may be given of customs of the trade or a general usage regulating the contract, none may be given of the intention of the parties in reference to the same on the particular occasion of the contract.²¹

A person of full age who enters into a contract or bargain, not induced by fraud or contrary to law, must abide by it, however hard its terms. Thus if a journeyman should contract with a master to work as a printer eighteen hours a day, he would be bound by it; but a woman entering into such a contract would not be bound, because the Factory Act makes it unlawful for a woman to work eighteen hours a day.

A minor is bound by a contract of hiring and service entered into by him only if it be for his benefit. *Primâ facie* such a contract is for his benefit; but if it can be shown that it is inequitable or prejudicial to the minor, it will not be binding on him.²² The other party to the con-

²⁰ *Evans v. Roe*, L. R. 7 C. P. 138.

²¹ *Fawkes v. Lamb*, 31 L. J. Q. B. 98.

²² *Meakin v. Morris*, 12 Q. B. D. 352.

tract is, however, always bound by it, unless the minor chooses to avail himself of his right to make it void. The mode of exercising this right is by ceasing to act as servant and informing the master that the contract is not considered binding. The fact that he has long acquiesced in the terms of the contract will not hinder his avoiding it at any time he thinks proper.

2. *The Service.*

As already stated, in the case of all but minors and women there is nothing to prevent the parties from making any arrangement they please with regard to hiring and service in the printing trade; but in the absence of a special arrangement a master who engages a man as a journeyman compositor or machine-minder is entitled to the services of the latter in the capacity in which he is engaged for the standard number of hours a day, and, on the other hand, the man is entitled to remuneration weekly at the standard rates of wages.

In London, at the present time (1884), the standard hours for journeymen printers—compositors, pressmen, and machine-minders alike—are 54 per week, and the standard rate of wages for each class is 36s. per week. In the provinces the standard hours and wages vary, the former between 51 at Liverpool and 60 at Brighton, and the latter between 35s. at Manchester and 20s. at Waterford. A table of the standard rates of wages and hours in all the chief provincial towns has been compiled by the Secretary of the Typographical Association, and it is given at length in Southward's "Practical Printing."²³

When it is desired that the man shall work "on piece," it must be so arranged, either at the time of hiring or afterwards, by the mutual consent of master and servant.

Piece prices in London are regulated by scales and rules settled by committees representing the masters and

²³ Second edition, pages 329-333.

operative printers respectively. These, which are somewhat intricate, are published by the London Society of Compositors, and are also to be found in the Appendix hereto.

By Rule xliii. of the London Society of Compositors, which is binding in what are known as "Society houses," it is provided that a compositor engaged in the office "on piece" shall not be called off the piece to be put on the establishment for any description of composition unless engaged for at least a fortnight, according to the terms of the rule of the Society relating to "Casual Engagements."

The rule last mentioned is as follows: "xli. That members (of the Society) called in to assist in the composition of bookwork or jobbing may take a casual engagement for not less than a day on the establishment, but not of greater length than a fortnight; at the expiration of which they must either be paid upon the piece, or, if discharged, then be entitled to a fortnight's notice;" and it is explained that the object of this rule is to discountenance the right of an employer calling in assistance for a few hours, and paying for that assistance at the rate of 8d. or more per hour. The compositor must be engaged at so much per day, and paid at least 6s. for each nine hours' work or attendance when the number of days does not extend to an entire week. It is further explained that a compositor under this rule is not bound to go parts of two days to make up one, but must be paid for the first as a day, whether it be a full one or not, unless he be employed the whole of the following day. A compositor, however, is not prevented from accepting less than a day's employment if engaged on piece and paid by the Scale for what he composes.

"Society houses" in the provinces are subject to the rules of the local societies, or to those of the Typographical Association, a body embracing nearly all provincial printing trades-unions. The Rule of the Association on this head is No. 40, which provides that a fortnight's notice must be

given "if members engaged on establishment wages are required to change to piecework prices, and *vice versâ*."

Members of the printing trades-unions are restricted to working on the establishment at not less than the standard rate of wages, or "on piece" at the Scale rates; they are forbidden by the rules of their Societies from contracting, by way of farming, to do any description of jobbing or bookwork, or from accepting an engagement on any such work so contracted for.

What was said in the previous section about the Rules of these Societies will be remembered: it is only those masters who elect to be bound by them that are so bound. But even non-society workmen engaged on the establishment cannot lawfully be changed to piecework against their will without having their present employment determined by the proper notice. And the same holds good with piece hands whom it is desired to put on the 'stab.

A servant is required to be faithful to his master, obedient to lawful and reasonable orders, respectful in his behaviour towards all in authority over him, chaste, diligent, mindful of his master's interests, sober, and competent to perform the duties for which he has hired himself.

A person who seeks employment in a position requiring knowledge and skill, impliedly undertakes that he is possessed of sufficient knowledge and skill to perform the duties of the position. Hence a person who applies for work as a compositor or a machine-minder impliedly represents that he knows the business.

If by his incompetence or gross negligence a workman causes his master loss, he is liable to compensate the master for such loss; and the master is at liberty not only (in some cases) to dismiss the workman, but to sue him in the County Court,²⁴ or, where the amount claimed is not

²⁴ *Hollyer v. Kelly and Co.* (*Printers' Register*, March, 1883, p. 162; *Printing Times* same month, p. 75) was a case of this kind.

more than £10, in the Magistrates' Court, for the amount of the damage he has suffered.

In *Hindley v. Haslam* (1878), 3 Q. B. D. 481, the appellant had been engaged by the respondents as a spinner, and had had certain material given him to work upon; this, by his incompetence and negligence, he had spoiled, and he was in consequence discharged. He was paid the wages he had actually earned, but nothing in lieu of notice. He brought an action in the County Court for wages in lieu of notice, and was awarded £3 10s., the respondents' overlooker appearing and stating in evidence why the appellant was dismissed, but no counter-claim being made for damages for spoiled goods. Afterwards the respondents summoned the appellant (under the Employers and Workmen Act, 1875) before justices of the peace for £8 8s. damages to cover the loss on the goods spoiled by him, and the appellant was ordered to pay that sum. He then appealed to the Queen's Bench, alleging—1. That the magistrates had no jurisdiction; 2. That the damages should have been deducted from the wages; 3. That the whole matter had been before the County Court by virtue of s. 3 of the Employers and Workmen Act, 1875, and could not be gone into again. The Court, however, dismissed the appeal, holding that though it might have been more convenient had the respondents counter-claimed in the County Court action, they were not bound to do so, and were justified in taking the subsequent proceedings.

The workman's negligence causing damage to his master may sometimes be not sufficient to justify dismissal, but yet sufficient to justify a claim for damages (see per Lush J. in the above case).

Whether a master is at liberty to stop the amount of the damage from the man's wages seems doubtful. The writer thinks he is.²⁵ But in a case of *Darcy v. Saunders*, heard

²⁵ It is worthy of note that in *Hindley v. Haslam*, one of the grounds of objection put forward by the workman was "that it was incumbent on the master to deduct any loss that he had sustained by

by Alderman Sir B. Phillips in 1879,²⁶ where the workman claimed 15s. for wages, and the master claimed 25s. for work spoiled by the complainant, the Alderman ordered the full amount of wages to be paid, and told the master he must sue for the damages he claimed. So, too, in a case of *Donavan v. Bush*,²⁷ Mr. Commissioner Kerr is reported to have given a similar decision. In this case the workman sued for 5s. wages, and the master claimed to set off a claim for damages for goods spoiled by the plaintiff; but the learned judge told him he could not "make himself judge in his own cause by stopping for the damage;" he must pay the wages in full, and bring a cross action for the damages. It does not appear whether the defendant had observed the County Court rules as to counter-claims. If he had not given the required notice, the decision may, on that account, have been correct; but if he had, it is submitted by the writer that it was wrong. For it is expressly provided by section 3 of the Employers and Workmen Act, 1875, that "in any proceeding before a County Court in relation to any dispute between an employer and a workman arising out of, or incidental to, their relation as such, the Court . . . may adjust and set off, the one against the other, all such claims on the part either of the employer or of the workman arising out of, or incidental to, the relation between them as the Court may find to be subsisting, whether such claims are liquidated or unliquidated, and are for wages, damages, or otherwise." So, too, since the Judicature Act, 1873, every defendant in an action may set off or counter-claim against any demand that is made upon him any claim he may have against the plaintiff, and judgment is to be given for the

wilful negligence from the wages due to the workman," such objection being, in the usual course, settled by his junior counsel, the present Mr. Justice A. L. Smith.

²⁶ See *Printing Times*, July, 1879. p. 160.

²⁷ *Printing Times*, August, 1876, p. 175.

party in whose favour the balance falls.²⁸ It is difficult to see why this should not apply in the case of a claim for wages. Indeed, the writer can think of no reason why it should not, except, perhaps, this : By the 33 & 34 Vict., c. 30, s. 1, it is provided "that no order for the attachment of wages of any servant, labourer, or workman shall be made by the judge of any Court of Record or Inferior Court," so that a judgment creditor can no longer stop a man's wages in the hands of his employer, the object being to prevent a workman being cut off from the means of procuring the necessaries of life. If, then, a master may stop such wages, he is able to place himself in a better position than a judgment creditor, and to inflict the mischief aimed at by the Act. Were he to bring his action for damages, the judge might, if he thought proper, order payment by instalments, so as to press as little heavily upon the workman as possible ; and it may be argued that it can scarcely be right that a master by taking the law into his own hands should be in a better position than if he came into Court. In cases of counter-claim, too, the Court is not bound rigidly, but "*may*, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case,"²⁹ and it would take care, if the counter-claim were heavy, not to make the order for payment or deduction too onerous upon the workman, but would spread the payment over a period. Therefore, if a master have a claim for damages against his workman and desire to stop his wages to defray it, the writer suggests that he should not deduct from each week's wages more than the instalments the County Court judge would be likely to order. By making a deduction from the wages, however, the master

²⁸ Judicature Act, 1873, sect. 24 ; Ord. xxi., r. 17. County Court Rules, 1875 ; Ord. xvi., r. 16.

²⁹ County Court Rules, Ord. xvi., r. 16.

runs this risk: If the man brings an action for the balance of his wages, then, unless the master shows that the amount of his damage is fully equal to the amount retained, the plaintiff may recover the difference, and will, unless the judge otherwise orders, be entitled to the costs of the action.

A master is entitled to the best services of his workman during all the ordinary working hours of a day. The workman must keep to the regular hours. Coming late in a morning has been held a sufficient justification for instant dismissal of a man, as will be seen hereafter.³⁰

No printer (not being a Jew employed by a Jew³¹) can be required to work on Sundays against his will, and in America it has been held that a servant forced by his master to labour on a Sunday may leave his service at once. So, too, in the case of *Phillips v. Innes* (4 Clark and Finelly 234) it was held by the House of Lords that a barber's apprentice, who by his indenture was bound not to absent himself from his master's business on holidays or weekdays, late hours or early, without leave, and who went away on Sundays without leave, although his master ordered him to stay and shave his customers, had committed no wrong, and that he could not lawfully be required to attend his master's shop on Sundays. But a servant who has charge of animals may be required to give them proper attention on Sundays, and the Court of Session in Scotland held in 1844 that a farm labourer who, when requested by his master to stay at home to attend the cattle, which were ill, in order that the other servants might go to church, refused to do so, might properly be dismissed without notice. And probably in all cases of absolute necessity a servant may be required to perform his work on a Sunday. When, however, there is no necessity, nor any work of charity to

³⁰ *Infra*, p. 61.

³¹ See the Factory Act, 1878, s. 51.

be done, it is illegal for a workman to work at his ordinary calling on a Sunday, the 29 Chas. 2, c. 7, providing "that no tradesman, artificer, workman, labourer, or other person whatsoever shall do or exercise any worldly labour, business, or work of their ordinary callings upon the Lord's Day, or any part thereof (works of necessity and charity only excepted); and that any person being of the age of fourteen years or upwards offending in the premises, shall for every such offence forfeit the sum of five shillings."³²

Sunday labour on daily newspapers is no doubt esteemed a "necessary" work; at any rate, the writer is aware of no prosecution for performing it. Special rules concerning payment for Sunday work have been framed for the London trade. (See Addenda to London Scale, agreed to November, 1866, rule 5, and Rules affecting Compositors working on Weekly Newspapers, 1874, rule 6.)³³

As regards work on Christmas Day and Good Friday, there is no rule of law, either statute or common law. The customs of the trade are what have to be looked to. In daily newspaper offices printers must work on these days as on others; on weekly newspapers there is no definite rule, and in bookwork and jobbing offices it is usual to close. Whether in an office of the last class a compositor who absented himself after being requested to attend could be dismissed summarily or be made liable to damages is, perhaps, doubtful. Much would depend upon the circumstances of each particular case.³⁴

³² Prosecutions under this Act are regulated by 34 & 35 Viet., s. 87, a statute passed for a year only, but continued till now by the annual Act to continue certain expiring laws.

³³ See also *Printing Times* for February, 1882, p. 52. In Manchester, Sunday work is paid for at double rates.

³⁴ See a case of *Cook v. Potter*, reported in the *Printing Times* for June, 1878, p. 125, where a workman unsuccessfully claimed wages for Good Friday, on which day the office was closed. In Manchester jobbing offices, work on Christmas Day and Good Friday is paid for at double rates. In Glasgow, work on fast days and general holidays

Bank holidays are in London and other large cities now observed as general holidays ; but if a master requires his men to work on such days it would seem that they must do so. In 1876, Messrs. Letts and Co., printers, of New Cross, summoned Richard Lee, one of their machine-boys, before the magistrate at Greenwich, for absenting himself from work without leave. On the August Bank holiday he had asked to stay away in the afternoon, but had been refused. He, however, left work at dinner-time, and did not return, thus stopping a machine for three hours. The defendant expressing sorrow, he was ordered to pay only the cost of the summons.³⁵

If a printer closes his establishment on a general holiday, such as a Bank holiday, he is not bound to pay his workmen wages for that day.³⁶ But if he closes it on a day which is not recognised as a general holiday, such as the day after Good Friday, a non-consenting workman is entitled to be paid, provided he was ready and willing to work on that day.³⁷

Can a workman be required to work overtime against his will ? There is no direct decision of a Superior Court on this important question, but it would seem that he can, provided

is paid for at overtime rates. In many offices in London, work proceeds as usual on Good Fridays ; in fact, it is only the purely commercial and book houses that close entirely. As regards Christmas Day, when it falls on a Friday it is customary for houses printing weekly papers issued on Saturdays to keep open, and for the men engaged on such papers to work as usual on them.

³⁵ Reported in the *Printers' Register* for September, 1876, p. 56.

³⁶ So held in several cases. See *Printers' Register* for November, 1882, p. 89. *Printing Times* for March, 1877, p. 62 ; for June, 1878, p. 125, and for 1882, pp. 52, 123, and 264. See, however, a case reported in the *Printers' Register* for October, 1883, p. 84, where the master was ordered to pay for the Bank holiday.

³⁷ See *Heath v. Head and Mark*, reported in *Printers' Register* for August, 1882, p. 34.

the demand upon him be not unreasonable. In the case of *Ree v. St. John, Devizes*, decided in the King's Bench in 1829, and reported in 4 Barnewell and Cresswell's Reports, p. 900, Mr. Justice Bayley made use of these words, "In every contract of hiring the law will imply that the party hired shall work at all reasonable hours when required. Generally speaking, the ordinary working hours in a manufactory are twelve hours per day; but it does not, therefore, follow that the master may not on extraordinary occasions require his servants to work at other hours, and whether he does so or not, the relation of master and servant continues during the whole day." Lord Fraser, in his work on the "Law of Master and Servant," says, "Even where there is a special agreement to work so many hours each day, the servant would not be justified in refusing, on a case of special emergency, to work an hour or two longer." Mr. Wood, in his book, adopts this view also; but Mr. Macdonell, the latest writer on the subject, doubts whether this can be so, and says there is no case supporting it, except *R. v. St. John*, cited above.

In 1882 the judge of the Clerkenwell County Court held that a master printer was justified in instantly dismissing a stereotyper who refused to work overtime on a Saturday afternoon when requested.³⁸

On the other hand, in July, 1881, Mr. Commissioner Kerr held that a compositor who was required to work overtime on a Saturday afternoon, and who, after working one hour overtime, refused to go on any longer, could not on that account be summarily dismissed.³⁹

In the printing trade, however, it has always been usual for the men to work overtime when reasonably required, and they have no valid excuse, such as sickness, for not doing

³⁸ *Matthews v. Blacklock and Co.*, reported in *Printers' Register* for July, 1882, p. 16.

³⁹ *Heathman v. Waterlow and Sons, Limited*, tried 27th July, 1881.

so. The rate of pay per hour for overtime is generally more than that for work in ordinary hours.⁴⁰

It being the custom to pay for overtime, it is also the custom to deduct from a man's weekly wages payment, at a proportionate rate, in respect of any time during ordinary hours he may have been absent from his work, and this although the wages be calculated and paid at a certain rate per week. Thus, if a man's wages are 36s. a week (of 54 hours), and he loses two hours, a deduction of 1s. 4d. is made. Many firms give their men a certain allowance, such as a total amount of half an hour a week, any time lost beyond this being deducted from the wages at a proportionate rate.

When a compositor has lost time in the ordinary working hours, he may be required to make it up by working overtime. This rule, however, is subject to some modifications. In London Society houses, where the usual hours are from 8 a.m. till 7 p.m. (2 p.m. on Saturdays), if a compositor has lost time on any day, he may, on the *same day* (but not on any other day⁴¹), be required to make it up after ordinary hours, but should he work after 8 p.m., all time after that hour must be paid for at an additional rate of 3d. per hour, even though the lost time may not have been made up before 8 o'clock.

If a printer be detained from work by sickness, he is, by the custom of the trade, unable to claim any wages for the time during which he has been absent. A clerk or other such servant may be dismissed, if from sickness or any other cause he becomes permanently or for a considerable time unable to perform his duties; but until he is dismissed, his wages must be paid.

⁴⁰ See the London Scale for Overtime agreed between masters and men in 1866; also the Table of the Typographical Association.

⁴¹ Each day stands by itself. (See answers of the Committee of Master Printers, 1866.) Therefore, if a compositor loses time on Monday, he may be required to make it up on Monday evening, but not on any other evening.

The important question of the right of the servant of one man to do work for another out of business hours, and to recover payment for it, was raised in the case of *Wallace v. De Young*,⁴² decided by the Supreme Court of Illinois in 1881. De Young was employed by F. and R., insurance agents, as their clerk and cashier, at a salary. After business hours he did clerk's work for Wallace, and sued to recover payment therefor. Wallace defended, alleging that as De Young was F. and R.'s clerk, it was they, if anybody, who would be entitled to sue. The following extracts from the judgment of Judge Walker are of interest : " It is claimed that the services of which the defendant in error (*i.e.*, De Young) rendered Wallace were within the scope of the business of F. and R., and were consequently paid for by them, and that he has no legal right to recover from Wallace's estate. It is believed that no one will contest the proposition that F. and R. were entitled only to his labour and skill in pursuit of the business which he had been employed to transact during business hours. They could have no possible claim to his earnings or labour after or before business hours. They only had a right to appropriate his labour and skill during the time devoted to the business which he was employed to transact. All that the defendant in error earned by labouring for Wallace out of business hours surely, on every principle of reason, justice, and law, belonged to him. He was clearly entitled to recover for all labour thus performed at the request of Wallace. . . . F. and R. could not require him to perform such services for Wallace, unless it was within the terms and scope of the agreement when his services were hired. They had no legal right to employ him to perform one kind of service, and require him to do another kind."

There has been no reported case of this kind in the English Courts, but it is believed that the opinion of Judge Walker on all points above recorded would be sustained here.

⁴² 38 American Reports, 108.

A master may make rules for the conduct of his establishment, and all persons engaged in it will be bound by such rules, so far as the same are applicable to them. Unless the rules are such as any master may properly require his servants to conform to, persons who were engaged prior to the promulgation of them will not be bound by them, except they assent to them; but they will in general be held to have assented, if the rules have been brought to their knowledge, and they have afterwards received wages without raising objection to the rules. If a conspicuous notice be posted up in a place where a person must of necessity see it, this will in general be equal to giving special notice to such person.

3. *Termination of the Service.*

Where the hiring is for a certain fixed period, at the end of such period the servant may leave, or the master may require him to leave, without giving any previous notice.⁴³

If after the end of the fixed period the service is continued, it will, as a rule, be construed to be on the same terms as nearly as may be as before, and either party may put an end to it on giving the proper or customary notice.

Where the period of hiring and service is indefinite, either party may put an end to the contract by giving to the other the customary notice.

The length of notice required in the case of any servant is a matter not of law, but of custom, and the custom must be proved, unless it be so well known that the Courts will take judicial cognisance of it.

Generally, whenever the contract can be determined by notice, the master may put an end to it at any moment on

⁴³ A compositor engaged for a particular job, *e.g.*, a list of voters, directory, &c., can be dismissed without notice at the termination of such job, but if during the engagement he be called upon to perform any other description of work, the special contract becomes broken, and he is then entitled to receive a fortnight's notice previous to dismissal.

paying to the servant a sum equal to the amount of the latter's salary or wages for the period during which the notice should run. The servant, however, has not always the same privilege. The rule would seem to be that he has it where his immediate quitting will entail only inconvenience upon the master, and that where it will cause loss he has no such right, but must, if he quits without notice, pay whatever damage the master suffers. Thus, a domestic servant may leave at any time on paying or forfeiting a month's wages, but a machine-minder cannot do so, as thereby his machine and the machine-boys would be rendered idle and the master would suffer pecuniary loss.

The following have been proved by evidence in various cases to be the lengths of notice to which each servant of the class named is by custom entitled :—

Compositor, ⁴²	pressman or machine-minder ⁴³	two weeks ⁴⁴
Clicker ⁴⁵		two weeks
Reader ⁴⁶		two weeks
Overseer, foreman, or printer ⁴⁷		one month
Head of department (according to status)		one to six months ⁴⁸

⁴² "Compositors to receive and give a fortnight's notice previously to their engagement being terminated." (Scale agreed between Masters and Men, 1847.)

⁴³ See *Hales v. London Co-operative Printing and Stationery Co., Printers' Register*, Dec., 1875, p. 116; *Printing Times*, Dec., 1875, p. 264.

⁴⁴ The notice is usually given on the weekly pay-day, but it can be given or received on any day during the week.

⁴⁵ A clicker stands in the same position as an ordinary compositor.

⁴⁶ Readers are not litigious, and the writer can find no case in which the question of length of notice arose. Two weeks is, however, well recognised as the proper notice.

⁴⁷ See *Hales v. London Co-operative Printing and Stationery Co., Printers' Register*, Dec., 1875, p. 116; *Printing Times*, Dec., 1875, p. 264; *Best v. Empire Printing Co., Printers' Register*, May, 1884, p. 241.

⁴⁸ Sometimes even more. In *Buckingham v. Surrey and Hants*

Clerk ⁴⁹	one month
Clerk, junior, paid weekly	one or two weeks
Lad, paid weekly	one week
Reporter ⁵⁰	one month
Sub-editor ⁵¹	three months
Editor ⁵² (according to status)... ..	three or six months

It is a custom in the London Printing Trade that a compositor may, at any time within the first fortnight of his engagement, leave his situation or be discharged therefrom without notice. In such case he receives pay for the time actually worked, save that if the man be employed on the establishment, and the master discharge him on the first day, he must pay him a full day's wages, however short a time he may have worked.⁵³

The death of either master or servant terminates a contract of hiring and service ; except that where a servant has contracted to serve the master and his executors or

Canal Co. (1882), 46 L. T. 885, the plaintiff, who had been engaged as engineer at £500 a year, was dismissed within the year on three months' notice. *Held*, that in the absence of any custom to the contrary, a hiring at such a salary was *prima facie* a hiring for a year certain, and that the plaintiff could recover his salary for the portion of the year remaining unexpired.

⁴⁹ In *Vibert v. Eastern Telegraph Co.* (1883), 1 C. & E. 17, a stationery clerk in a telegraph office at £135 a year, payable fortnightly, was found to be entitled to a month's notice.

⁵⁰ *Griffin v. Howe, Printers' Register*, Feb., 1878, p. 153. As to Parliamentary Reporters, see *Marsh v. Press Association, Printers' Register*, Sept., 1876, p. 55 ; *Latimer v. Hansard, Printing Times*, March, 1882, p. 72 ; *Printers' Register*, April, 1882, p. 195.

⁵¹ *Mitchell v. Proprietors of Liverpool Mail, Printers' Register*, Feb., 1883, p. 131 ; *Printing Times*, Jan., 1883, p. 19.

⁵² See *Hollings v. Robinson, Printers' Register*, March, 1884, p. 198 ; *Printing Times*, March, 1884, p. 70 ; *Hunter v. Henchman, Printers' Register*, July, 1883, p. 15 ; *Printing Times*, July, 1883, p. 183.

⁵³ *Chaplain v. Metropolitan Printing Co., Printing Times*, July, 1882, p. 175 ; *Printers' Register*, Aug., 1882, p. 34.

administrators, he must continue to serve, and the executors or administrators must continue to employ him.

Bankruptcy does not operate as a dissolution of a contract of hiring and service.⁵⁴ As to its effect on a contract of apprenticeship, see *post*. The trustee of a bankrupt master cannot compel the servant of the latter to fulfil his contract of service.⁵⁵

The effect on the contract of the assumption of a partner by the master is not quite certain. Some contend that the servant is not bound to obey the orders of the partner, while others deny this.⁵⁶ So, too, where the hiring is by a firm, and there are afterwards changes in the firm, it is asserted by some, and denied by others, that the servant is not bound to continue his service.⁵⁷

Contracts of hiring and service cannot be assigned without the consent of the parties.⁵⁸ Thus, if A contract with B for his services in any capacity for a year, and during the year A sells his business to C, B cannot be required to work for C; unless indeed B have contracted to serve A and his assigns, when he can be so required.⁵⁹ So, too, a servant is not at liberty to find a substitute to perform services due by himself.

The circumstances under which a master may instantly terminate the contract will be discussed when treating of the master's rights against his servant.

A contract of hiring and service may, of course, be dissolved at any time by consent of all parties thereto, and in

⁵⁴ *Thomas v. Williams*, 1 A. & E. 685.

⁵⁵ Per Lord Abinger in *Gibson v. Carruthers*, 8 M. & W., at p. 343.

⁵⁶ See Macdonell, Master and Servant, p. 237.

⁵⁷ Macdonell, p. 236, *Tasker v. Shepherd* (1861), 30 L. J. Ex. 207; *Hobson v. Cowley* (1858), 27 L. J. Ex. 205.

⁵⁸ Macdonell, p. 242. Pollock on Contracts, 3rd edition, p. 440.

⁵⁹ *Cooper v. Simmons* (1862), 31 L. J. M. C. 138; *Benwell v. Inns* (1857), 26 L. J. Ch. 663.

the printing trade it is not an uncommon thing for a master to permit a servant to leave his employ without notice upon application, where the servant has an opportunity of bettering his condition.

4. *The Master's Rights against his Servant.*

We have already⁶⁰ seen that a master has the right to require of his servant: 1. Obedience to his lawful and reasonable orders. 2. Respectful behaviour. 3. Moral conduct. 4. Diligence, fidelity, and mindfulness of the master's interests. 5. Competence to perform the duties for which he has been engaged. For the infringement of any of these rights a master has the right to dismiss his servant summarily. We will consider each separately.

1. It is not all orders of his master that the servant is bound to obey; it is only such as are lawful and reasonable.⁶¹ No man is bound to obey an unlawful order, and every servant is entitled to disregard an unreasonable one. A man may not be dismissed without notice because he refuses to jeopardise life or limb, and a servant engaged for one kind of work cannot be required to perform another outside the scope of his proper business—*e.g.*, a man engaged as a compositor cannot be required to do duty as clerk in the counting-house. As to orders to work overtime, see *ante*, p. 51.

The orders of the master's deputy, such as his manager, overseer, or foreman, under whom the servant is placed, are, when given within the scope of the deputy's authority, equivalent to the direct orders of the master himself.

Where by the rules of an establishment, so promulgated as to form part of the contract of hiring and service (see *ante*, sect. 1), an infringement of any of such rules is made punishable by summary dismissal, the offender may be dismissed accordingly.

⁶⁰ Page 45.

⁶¹ On this head see also section 2 of this chapter.

2. Respect is due not only to the master himself, but to all who are in authority over the servant; and insolent behaviour is a sufficient cause for summary dismissal. The degree of insolence justifying such a dismissal varies according to the position of the parties, their habits, manners, and customary language. Each case rests upon its own facts.⁶² "Any angry word spoken under provocation, or a disrespectful expression or action apologised for, will not be held sufficient to sanction a dissolution of the contract."⁶³

3. A servant who commits a crime, or otherwise grossly misconducts himself in any way to injuriously affect his employer, may be dismissed. Assault or riotous conduct on the master's premises, or in immediate proximity thereto, may justify instant dismissal. Misbehaviour not affecting the master is not a ground for dismissal. Unchastity in an indoor servant (a member of the master's household) is a sufficient ground, and possibly in some offices and workshops unchastity on the part of a female servant, although not a member of the household, would be so also. It would depend upon the circumstances of the case. The use of obscene language in a printing-office before female employées has been held a good cause for instant dismissal.⁶⁴ Drunkenness is also often a sufficient justification for dismissal,⁶⁵ but it is not every act of drunkenness that is so. Much depends on the position of the servant, and the degree in which the master is injured, either in pocket or reputation. In all such cases it is for the jury to say, in view of the position occupied by the servant and the particular circumstances, whether his discharge is reasonable. A minister who should become intoxicated on any occasion

⁶² See some cases reported in the *Printing Times* for Jan., 1879, p. 19, and Aug., 1880, p. 203.

⁶³ Fraser, Master and Servant, p. 405.

⁶⁴ In *Fitzpatrick v. Otto Printing Co.*, *Printers' Register*, October, 1883, p. 49; *Printing Times*, 1883, p. 163.

⁶⁵ See *Best v. Williams*, *Printing Times*, June, 1878, p. 125.

would, of course, be subject to instant dismissal, because inconsistent with his position ; but a farm-labourer or a clerk, when off from duty upon a holiday, would not.⁶⁶ And a printer is in the same category as the farm-labourer or clerk. Habitual drunkenness has been held sufficient to justify dismissal wherever it interferes with the due discharge of the servant's duties.⁶⁷

4. Diligence and fidelity are essential qualities in a servant, but "it is not every failure in faithful service which will warrant a master in discharging his servant, and, if he does so, he must discharge him on the occasion of his misconduct, and not at any time after, at the master's option."⁶⁸ Absenting himself at a time when he knew or ought to have known that his services would be wanted would be sufficient cause for instant dismissal. "A printer who quitted his work shortly before a newspaper went to press might, no doubt, be at once dismissed."⁶⁹

Habitually coming late in the morning has on several occasions been held a sufficient cause for instantly dismissing printers,⁷⁰ and in the case of Messrs. Hazell and Watson's men it was so held, although they were piece hands.⁷¹ It is, however, usual to warn the men that dismissal is the penalty of being late.

A workman who absents himself without leave may not only be dismissed, but may be made to pay damages to his master, on the principle that if a man breaks a contract he has entered into, he must pay the damage naturally resulting from the breach. In a case of *Smith v. Hopkins*, heard

⁶⁶ Wood on Master and Servant, p. 212.

⁶⁷ *Speck v. Phillips*, 5 M. and W. 279 ; *Wise v. Wilson*, 1 C. and K. 662.

⁶⁸ Per Baron Bramwell in *Horton v. McMurtry*, 5 H. and N. 66 ; 29 L. J. Ex. 260.

⁶⁹ Macdonell, Master and Servant, p. 209 ; *More v. Leech*, *Printers' Register*, Oct., 1882, p. 70.

⁷⁰ See *Glasgow News* case, *Printers' Register*, Dec., 1879, p. 104 ; *Hasleden v. Howard and Jones*, *Printers' Register*, Dec., 1884, p. 121.

⁷¹ *Matthews v. Watson*, *Printing Times*, May, 1876, pp. 104 and 109.

at Maidstone Petty Sessions,⁷¹ the plaintiff claimed from the defendant, an apprentice in his employ, 7s. 6d. damages for absenting himself from his work from Thursday, 3rd August, to the following Monday morning. Defendant had asked for a holiday and had been refused owing to press of business. He was ordered to pay the 7s. 6d. and costs, but the plaintiff, having obtained a decision in his favour, forewent his right to recover.

If a servant, without sufficient cause, goes away altogether from his master's employment, the master is entitled to recover damages against him, and the measure of damage is usually the amount of wages the servant would have earned for the period during which notice should have run, and where the claim does not exceed £10 it may be sued for in a police court. Thus, in November, 1884, a machine-boy named King was summoned to the Guildhall Police Court by Mr. Straker, his employer, for a week's wages, he having left his employment without notice, and an order for the payment of 10s. and costs was made against him.⁷² But the amount of wages above mentioned is not the limit of the master's claim; if he has sustained more damage he may sue for it. Thus in *Luker v. Wardlaw*, heard by Mr. Barstow on April 5th, 1882,⁷³ the defendant was a machine-minder at Messrs. Waterlow and Sons, Limited, at 38s. a week wages; in consequence of a trade dispute he left on a Saturday without notice, and never returned to work; he ought to have given a fortnight's notice; by reason of his abrupt leaving the machine he tended was idle nine days, and so were the two boys who assisted at it, moreover Messrs. Waterlow alleged that they were put to considerable loss otherwise. Mr. Barstow, in giving his

⁷¹ *Printers' Register*, Sept., 1876, p. 56.

⁷² *Printers' Register*, Dec., 1884, p. 121.

⁷³ A verbatim report of this case, and others arising out of the same dispute, appeared in the *British and Colonial Printer and Stationer*, and was afterwards published by the London Printing Machine Managers' Association.

decision, said the evidence was that there were two boys, one at 14s. and the other at 13s. per week, and that the loss from the machine standing idle was £1 a day. The defendant was clearly liable for this loss, and for the boys' wages while they were idle. Then there was the diminution of trade profits by Messrs. Waterlow by reason of their not being able to fulfil their contracts, but that was a matter that could not be claimed for; the total sum asked in the summons was £5, and it was quite plain that that was a very moderate sum. He therefore awarded the full amount claimed and costs.

Habitual neglect of his duties is a good ground for dismissing a servant. The observations of Baron Bramwell above quoted apply here also.

A servant entrusted with any of his master's property is bound to use ordinary diligence in the care and preservation of it, and to exert himself to preserve it from any unexpected danger to which it may be exposed,⁷⁴ and if he omits his duty he is answerable to his master in damages.

"A servant is bound to consult the interests of his master, and may be dismissed for acts seriously injurious thereto,"⁷⁵ *e.g.*, divulging secrets, advising an apprentice to quit his master's employment, claiming to be a partner, soliciting orders on his own behalf to the detriment of his master, &c. A servant who purposes setting up in business for himself may not, while in his master's employ, solicit orders for himself, and if he does, he may be at once dismissed; but the master has no legal cause of complaint if the servant merely asks that, when he shall have set up in business, his master's customers will favour him with their orders.⁷⁶

5. When a person engages to perform certain duties, he impliedly warrants that he is reasonably competent to

⁷⁴ Story on Bailment, sect. 429.

⁷⁵ Macdonell, Master and Servant, p. 210; *Arding v. Lomax*, 4 L. J. Ex. 80.

⁷⁶ See *Nicholl v. Martyn* (1799), 2 Espinasse's Reports, 732.

perform them.⁷⁷ If he does his employer damage by reason of his incompetence, he is liable to compensate him, and if he be grossly incompetent, he may be summarily dismissed. On this subject see *ante*, p. 45. If a master employs a man upon certain work, knowing him to be incompetent to perform it, he, of course, has no right to complain if it is ill-done.⁷⁸

We have already seen⁷⁹ that if a servant by sickness becomes permanently incapacitated from the performance of his duties, he may be dismissed.

A master when he dismisses his servant is not legally bound to assign any reason for doing so, and if he gives any reason he is not bound to stand to that if sued for wrongful dismissal, but may show that in fact there was at the time of dismissal a good cause for it, although he did then not assign such cause, but another, and even although he was at the time of the dismissal actually ignorant of such cause.⁸⁰

If a master remove his place of business from one locality to another, he cannot compel his clerks or workmen to follow him, if this would be inconvenient to them. Lord Fraser says :⁸¹ " In the case of servants whose work has reference to a *place*, not to the master's *person*, such as overseers, ploughmen, or workmen at manufactories, the master cannot remove the servant to any other farm or manufactory at any distance inconvenient to the servant. The place where the master has his work at the time of engagement would be held the place where (in the absence of express stipulations) it is implied that the servant was to labour, and having once entered to his service, he cannot be removed to any place which may occasion him trouble or

⁷⁷ *Harmer v. Cornelius* (1858), 5 C. B. N.S. 236 ; 28 L. J. C. P. 85.

⁷⁸ See per Willes J. in *Harmer v. Cornelius*.

⁷⁹ Page 58.

⁸⁰ *Spotswood v. Barrow* (1850), 5 Ex. 110 ; 19 L. J. Ex. 226.

⁸¹ P. 352 of his work on Master and Servant, Campbell's edition.

expense." The question is important to those who are engaged for long terms, and especially to apprentices. *Eaton v. Western* (1882), 9 Q. B. Div. 636, the facts whereof will be found in the section relating to apprentices, was a case in which the Court of Appeal decided that an outdoor apprentice could not be compelled to follow his master from Lambeth to Derby, whither the works had been transferred, and the reasoning of the judges applies to all outdoor servants.

5. *The Servant's Rights against his Master.*

(a) *Arising out of the Contract.*

A servant is entitled to be paid by his master the salary or wages agreed upon. If the rate of pay was not fixed at the hiring, he is entitled to recover as much as his services are reasonably worth, and, as a rule, if there be a standard or customary rate of pay for servants such as he, that is the rate at which he is entitled to claim payment.

The mere fact that one man does work or renders a service which benefits another does not give him a right to compensation from such other. Thus, as a learned judge once said, if a man without my knowledge or request cleans my shoes for me, I may wear them so cleaned, and yet be not liable to pay him anything for his pains.⁸² So, too, a person related to another may render him services without having any right to payment for them. In fact, before any claim for remuneration can be supported, the claimant must show that there was a request for the services and a promise to pay for them. Such request and promise will generally, but not always, be implied where valuable services have been rendered. They are implied in every contract of hiring and service. Therefore, if a person tells another to do certain work, he must pay for it, and, generally, if he knows that a person is doing work for him under circumstances which give rise to a presumption that

⁸² Per Pollock C.B. in *Taylor v. Laird*, 25 L. J. Ex. 329.

such person expects to be compensated, and does not stop him, he will be liable to pay him a reasonable sum for the work.

If a man should say, "I will do this work for you, and leave it to you to pay me what you think right," and the person for whom he does the work does not choose to pay him anything, he can recover nothing.

So, too, if a man agrees to do work for such a sum as X. Y. shall certify, he must get the certificate of X. Y. before he can recover anything.⁸³

If a person is by law already bound to perform services for another, any promise made with a view to induce him to perform such services is not binding.⁸⁴ But if the services so induced be in any degree more than those which could already be legally exacted, then the promise is binding.

If a person contracts to perform a certain work for a certain sum, he can, as a general rule, claim nothing till he has completed the work. The rule is subject to some exceptions, and it varies according as the contract is (in legal parlance) divisible or indivisible. (See Smith's Leading Cases, vol. ii., p. 1, *et seq.*)

If a servant, before the expiration of the time for which he was engaged, die, be dismissed for a sufficient cause, or discharge himself, he cannot recover the value of the services he has rendered under the contract. This rule often works much hardship, and even injustice, but it is well established. The leading case on the subject is *Cutter v. Powell*, 2 Smith's Leading Cases, 1. There, one Cutter, a sailor, engaged to serve as second mate on board a ship from Kingston, Jamaica, to Liverpool for thirty guineas. The ship sailed on 2nd August, and on the 20th September, before she reached Liverpool, Cutter died. His widow brought an action to recover the wages for his services to the date of his death, and it was held that the contract

⁸³ Leake on Contracts, 639.

⁸⁴ *Harris v. Carter*, 23 L. J. Q. B. 295.

was indivisible, and that she could recover nothing, her husband not having completed it. In *Spain v. Arnott* (1817),⁸⁵ Lord Ellenborough said : " If the contract be for a year's service, the year must be completed before the servant is entitled to be paid," and the rule has been followed in *Ridgway v. Hungerford Market Co.* (1835),⁸⁶ and *Searle v. Ridley* (1873), 28 L. T. 411.⁸⁷ Where wages are payable so much per quarter, per month, or per week, the servant gains a right to them as each quarter, month, or week, as the case may be, accrues, and this right once vested is not lost by subsequent conduct, unless the terms of the contract otherwise provide.⁸⁸ Suppose, therefore, a printer paid 36s. a week on Friday nights ; on Friday, December 12th, he was entitled to be paid his week's wages, but did not receive them ; on Thursday, the 18th December, he was properly dismissed for gross insolence : he would be entitled to receive the 36s. due on the 12th, but could not compel his employer to pay him anything for the work he had done since that date. In some houses it is a rule to make it one of the terms of employment that persons leaving without notice shall forfeit all wages due. In *Walsh v. Walley* (1874),⁸⁹ such was the case. The plaintiff was a weaver, and a weekly servant, his wages depending upon the number of pieces he wove. The wages

⁸⁵ 2 Stark. 256.

⁸⁶ 3 A. and E. 171.

⁸⁷ See *Button v. Thompson*, L. R. 4 C. P. 330 ; 38 L. J. C. P. 225.

⁸⁸ In *Searle v. Ridley* the plaintiff had been engaged by the defendant as general superintendent at a yearly salary payable monthly two months' notice in writing to be given to terminate the agreement. During the first month the defendant complained that he was incompetent, and gave him notice to leave. During the second month, however, the defendant summarily dismissed him for incompetency. He had been paid the first month's salary, and now brought an action for the second. The Court of Queen's Bench held that the summary dismissal was justifiable, and that the plaintiff could recover no part of the second month's salary.

⁸⁹ L. R. 9 Q. B. 367 ; 43 L. J. Q. B. 102.

were ascertained up to noon on each Thursday, and were payable on the following Saturday. On Thursday, April 25th, it was ascertained that he had earned, up to noon on that day, 15s. ; on Friday, the 26th, he worked and earned 7s., and the same day he left without notice : he ought to have given fourteen days' notice. It was held that he had forfeited the 15s. and the 7s. Other cases of this sort are *Saunders v. Whittle* (1876),⁹⁰ *Gregory v. Watson* (1876),⁹¹ and *Warburton v. Heyworth* (1880),⁹² a synopsis of which will be found in Macdonell's Master and Servant, p. 638.

The wages of artificers must be paid in cash. Payment in goods is forbidden by the Truck Act (1 & 2 William IV., c. 37). Wages may not be paid to workmen in public-houses or in any office or garden pertaining thereto.⁹³

Where the master refuses or neglects to pay the servant the salary or wages due to him, the latter has his remedy at law. If the amount exceed £50, he must bring his action in the High Court of Justice. If it amount to £20, and do not exceed £50, he may, at his option, bring his action in the High Court or in the County Court. If it amount to anything between £10 and £20, he should sue in the County Court.⁹⁴ If it do not exceed £10, he has the option of suing his master in the County Court, or of summoning him before a magistrate under the Employers and Workmen Act, 1875.

As a rule, an infant (*i.e.*, a person under 21 years of age) cannot bring an action except through the intervention of a "next friend," but by the Statute 9 & 10 Vict., c. 95, s. 64, an infant may sue for "any sum of money not greater than £20 which may be due to him for wages or piece work, or for work as a servant, in the same manner as if he were of

⁹⁰ 33 L. T. 816 ; 24 W. R. 406.

⁹¹ 34 L. T. 143.

⁹² 6 Q. B. D. 1 ; 50 L. J. Q. B. 137.

⁹³ By Act of 1883 (46 & 47 Vict., c. 31).

⁹⁴ He may bring his action in the High Court, but he will recover no costs of suit.

full age." A married woman may (by virtue of the Married Women's Property Act, 1882, s. 12) take proceedings in her own name without joining her husband as a party.

Should a master become bankrupt, his clerks, servants, and workpeople are entitled to be paid in full all their wages or salaries in respect of services rendered to, or work done for, him (whether time or piece work) during four months before the date of the "receiving order" in the bankruptcy; but no claimant in respect of wages or salary can receive in full more than £50: if he has any further claim, he must as to that rank with the ordinary creditors.⁹⁵ It is doubtful whether the bankruptcy rule applies when the employer is a joint stock company and it is wound up.⁹⁶ If the receiver, trustee, or liquidator continues the employment of any servant of the bankrupt or company, he must pay him in full for his services since the bankruptcy or winding up order.

The wages of servants, labourers, or workmen cannot be attached.⁹⁷ In other words, creditors of the persons earning the wages cannot require the masters to pay such wages to them to satisfy their debts instead of to the persons who earned them.

Wages or salary not sued for within six years of the date when due, or within six years of the last date when the defendant admitted that they were due, cannot be recovered: the claim is barred by the Statute of Limitation (21 Jas. I., c. 16).

A master is not bound to supply a piece hand with work. This is well recognised in the printing trade in London and other large towns. "Where the contract of hiring

⁹⁵ Bankruptcy Act, 1883, s. 40. If the estate is not sufficient to pay the taxes, rates, wages, and salaries in full, each must abate, *pari passu*.

⁹⁶ See Buckley on the Companies Acts, 4th Ed., p. 313.

⁹⁷ By Act of 1870 (33 & 34 Vict., c. 30). See *Gordon v. Jennings*, 9 Q. B. D. 45; 51 L. J. Q. B. 417.

merely contains an undertaking to pay stipulated wages in proportion to the work done, there is no implied obligation on the master's part to find work, though the disposition is to construe contracts of doubtful significance as to this into an agreement on the master's part to enable the servant to earn regular wages. On this subject the words of Cockburn, C.J., in *Churchward v. The Queen*⁹⁸ are of value : 'Where the act to be done by the party binding himself can only be done upon something of a corresponding character being done by the opposite party, you would there imply a corresponding obligation to do the things necessary for the completion of the contract.' So if a man engages to work, and goes to great expense, and he is only to be paid by the measure of the work he has performed, the contract presupposes and implies an obligation to supply the work."⁹⁹

If a master, without legal justification, refuses or neglects to employ his servant, the latter may bring an action for his wages or for damages. Giving up business is not a legal justification. If the servant sue for *wages*, he must show that he was always ready and willing to serve, and tendered his services to his master. If he pleases, however, he may treat the refusal to employ him as a dismissal, and he then must sue for damages.

Where a servant is wrongfully dismissed, he is not at liberty to remain idle during all the time his master should have employed him and recover the full amount of his wages for such time. It is his duty to seek fresh employment, and he will be entitled to recover from the master only the actual loss incurred by reason of the dismissal, which, where another employment may be easily obtained, may be much less than the wages for the unexpired period of service.¹ Thus, in the case of a compositor or machine-

⁹⁸ L. R. 1 Q. B. 195 ; 35 L. J. Q. B.

⁹⁹ Macdonell, Master and Servant, p. 120.

¹ Mayne on Damages, 3rd Edition, p. 197 ; *Goodman v. Pocock*, 15 Q. B. 576.

minder wrongfully dismissed, he is entitled to recover a full fortnight's wages only where he has during the fortnight following the dismissal sought other employment and been unable to obtain it. But if the person has made an effort to obtain employment and has failed, it is the usual thing to award as damages the amount he would have earned as wages during the period that would have elapsed had the hiring been terminated in the proper way. Where a person was engaged as managing clerk for two years with a fixed salary and a share of the profits, and was dismissed at the end of four months and a half, the jury gave him a year's salary and his share of profits for twelve months, and this was held not to be excessive.² In *Yelland's Case*,³ Lord Hatherley (then Vice-Chancellor Wood) laid down a rule for the calculation of damages in such cases. There the claimant had been engaged as manager to a company for a term of years, before the expiration of which the company was wound up. It was held that he was entitled to claim for the present value of an annuity for the unexpired term of a sum equal to his full yearly salary, less deductions in respect of risk to health and life, and of the chance of getting fresh employment within the term. Menial servants improperly dismissed always recover a month's wages.

The circumstances under which a servant is dismissed cannot be taken into account in awarding damages in an action for wrongful dismissal simply; the plaintiff can recover only his pecuniary loss.⁴

A master is bound to indemnify his servant in respect of all expense or loss incurred or sustained in executing his lawful orders. If the servant execute an unlawful order, he cannot obtain indemnity, although the master may have expressly promised to indemnify him.

A person who has been employed by another to make up, repair, or otherwise work upon certain materials or

² *Smith v. Thompson* (1849), 8 C. B. 44.

³ (1867) L. R. 4 Eq. 350.

⁴ *Walton v. Tucker*, 45 J. P. 23; *Times*, Dec. 9, 1880.

things, and has expended labour or money upon them, has a lien on such things till he is paid. But a servant has no lien upon the property of his master which he has as a servant got into his possession. Thus a compositor who sets up type in his employer's office has no lien on the type for his wages ;⁵ but if a forme and paper should be sent to a printer to work off, or to a hot-presser to be pressed, he will have a lien on them, and need not part with either till he is paid, unless there be a contract or usage to the contrary.

A servant's right to terminate his engagement at a moment's notice is very limited ; in fact, it may almost be said to be limited to cases where the master attempts to commit some criminal offence against him, *e.g.*, murder. There may, however, be other circumstances which will justify a servant in immediately quitting his employment. Unjust accusations of a serious nature may be such. But mere disputes, or arbitrary, and even unlawful conduct on the part of the master will not give the right. A servant, indeed, as a general rule, must always give his master the customary notice before leaving him.

A female servant who marries is not thereby justified in quitting her employment.⁶

A servant has a right to belong to a trades-union, even though his master disapproves thereof.⁷

(b) *In respect of Injuries Sustained.*

As a general rule a servant has the same right against his master in respect of injury to his person, his property, or his reputation, caused to him by his master personally, as he would have if he were a stranger. Thus, a servant assaulted, slandered, or libelled by his master may maintain an action against him. A servant, too, who receives injury

⁵ See *Franklin v. Hosier* (1821) 4 Barn. and Ald., 341.

⁶ Macdonell's *Master and Servant*, p. 103.

⁷ See Chapter on Trades-Unions, *post*.

by reason of the personal negligence of his master may recover damages against him.

A servant injured by the personal negligence of one member of the firm employing him may recover against the firm if the negligent partner acted, or omitted to act, in his capacity as a member of the firm, otherwise the member offending is alone responsible.

Prior to the passing of the Employers' Liability Act, 1880, a master was not liable to his servants for the acts or omissions of their fellow-servants in the course of their employment,⁸ and he is still not liable unless the case is within that Act.

Therefore, where a machine-boy was injured by reason of the negligence of the machine-minder, he could not, before the Act, recover compensation against the master, nor could any workman employed in a factory recover against the master in respect of any injuries caused by the negligence of any other workman in the same establishment, or even the superintendent thereof.

Who are fellow-servants has often been considered by the Courts. For the purposes of this work we need not go into the cases, but may say that all the compositors, machine-minders, pressmen, apprentices, machine-boys, engineers, stokers, warehousemen, binders, porters, labourers, messengers, drivers of carts, and other workmen, whether foremen or of ordinary grade—and possibly also the clerks—engaged in and about the same establishment, and working for a common employer, are fellow-servants. "The duties of two servants may have little connection, and may rarely bring them together. They may be of different grades; they may belong to different departments of the same factory, workshop, or establishment; their occupation may lie far apart, and they may be scarcely aware of each other's existence; and yet they may be not the less fellow-servants."⁹

⁸ *Priestley v. Fowler* (1837), 3 M. & W. 1.

⁹ Macdonell, *Master and Servant*, p. 306, quoting *Shaw, J.*, in *Farwell v. Boston Rail. Co.*, 4 Met. (Mass.) 49.

A master is bound to use reasonable care in selecting his servants, and if he appoint a man to a post requiring skill without troubling whether he possesses that skill or not, and a fellow-servant is injured through the negligence of such person, the master will be liable. Thus, in America, a railway company who employed an habitual drunkard as a pointsman were held liable for injuries received by one of their servants through his negligence.

A master is liable to his servant for personal injury sustained by the latter, and resulting from the unsafe state of the premises upon which the servant is employed, whenever the danger is at the time of the accident known to the master and unknown to the servant. If the servant knew of the danger, or if the master did not know of it, in either case the master is not liable.¹⁰

By the Common Law—apart altogether from the Employers' Liability Act—a master is liable for injuries his servant has sustained by reason of defects in machinery or plant, which defects were known to the master, or might have been discovered by him had he exercised reasonable care, and were not known to the servant.

If the servant knew of them, he cannot (save under the Employers' Liability Act) recover against his master, although the latter also had knowledge of them; and so, too, if the defects were unknown to the master, and unknowable to him by the exercise of reasonable care, the servant cannot (save under the Act) succeed. But a master cannot escape merely by reason of his ignorance. "Where a master is employing a servant in a work, particularly work of a dangerous character, he is bound to take all reasonable precautions that there shall be no extraordinary danger incurred by the workman. . . . A master employing servants upon any work, particularly a dangerous work, is bound to take care that he does not induce them to work under the notion that they are working with good

Griffiths v. London and St. Katherine's Docks Co. (1884), 12 Q. B. D. 259 (C.A.).

and sufficient tackle, while he is employing improper tackle."¹¹ But an employer who invites a man to work with certain machinery does not thereby warrant that it will not fail. "I take it to be perfectly clear," said Lord Wensleydale,¹² "that in these cases there is no warranty. All that the master is bound to do is to provide machinery fit and proper for the work, and to take care to have it superintended by himself or his workmen in a fit and proper manner ;" and, by the Common Law, a master who selected proper and competent persons to superintend and direct the work, and furnished them with adequate materials and resources for the work, was not liable, if the persons so selected were guilty of negligence.¹³

But by the Employers' Liability Act¹⁴ the law has been materially altered. Before considering that Act, however, we will draw attention to a rule of law which applies to all actions for negligence. It is that although negligence on the part of the defendant may have been proved, yet if it be shown that the plaintiff has himself been guilty of negligence contributing to the injury complained of—usually called "contributory negligence"—he cannot recover, and this though the negligence of the defendant have been much greater than that of the plaintiff. What is negligence in a man may not be such in a child ; and, accordingly, children have sometimes recovered damages under circumstances which, had they been grown up, would have barred their right.¹⁵

A servant who knows his employment is dangerous, and yet elects to enter upon or continue in it, has not, as a rule, any claim against his master for injuries sustained in

¹¹ Per Lord Cranworth in *Paterson v. Wallace* (1854), 1 Paterson's Scotch Appeals, 389.

¹² In *Weenes v. Mathieson*, 1 Pat. 1044.

¹³ Per Lord Cairns in *Wilson v. Merry* (1868), L. R. 1 Sc. & Div. App., 326.

¹⁴ 43 and 44 Vict., c. 42.

¹⁵ *Woodley v. Metropolitan Railway Co.* (1877), 2 Ex. D. 384.

it.¹⁶ So if a servant knows that machinery is dangerously defective, and yet chooses to use it, he has, as a rule, no claim if he is injured.¹⁷ But if he is induced to continue working with defective machinery by a promise on the part of the master that it shall be rectified,¹⁸ or if the master is guilty of a breach of statutory regulations for the protection of his workpeople (*e.g.*, those under the Factory Act), and one of them continues to work with the knowledge of this fact, and is injured, he will not necessarily be disentitled to recover damages.¹⁹

The Employers' Liability Act, 1880.

We will now consider the Employers' Liability Act,²⁰ which considerably enlarges the rights of servants against their masters, but out of which it is competent for them to contract themselves.²¹ By Sect. 1 of this Act it is enacted, "Where after the commencement of this Act²² personal injury is caused to a workman²³

"(1) By reason of any defect in the condition of the ways, works, machinery, or plant connected with or used in the business of the employer; or

"(2) By reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him whilst in the exercise of such superintendence; or

"(3) By reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was

¹⁶ See *Griffiths v. Gidlow* (1858), 3 H. & N. 648; 27 L. J. Ex. 405; and *Senior v. Ward* (1859), 1 E. & E. 385; 28 L. J. Q. B. 139.

¹⁷ See *Grizzle v. Frost* (1863), 3 F. & F. 623.

¹⁸ *Holmes v. Clark*, 31 L. J. Ex. 356.

¹⁹ *Britton v. G. W. Cotton Co.* (1872), L. R. 7 Ex. 130; 41 L. J. Ex. 99.

²⁰ 43 and 44 Vict., c. 42.

²¹ *Griffiths v. Lord Dudley*, 9 Q. B. D. 357; 51 L. J. Q. B. 543.

²² January 1st, 1881.

²³ See Sect. 8 for definition of "workman."

bound to conform, and did conform, where such injury resulted from his having so conformed ; or

- (4) By reason of the act or omission of any person in the service of the employer done or made in obedience to the rules or byelaws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf ; or

- “(5) By reason of the negligence of any person in the service of the employer who has the charge or control of any signal, points, locomotive engine, or train upon a railway ;²⁴

the workman, or in case the injury results in death, the legal personal representatives of the workman, and any persons entitled in case of death, shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of nor in the service of the employer, nor engaged in his work.”

SECT. 2. *Exceptions*.—“A workman shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases ; that is to say,

- “(1) Under sub-section one of section one, unless the defect therein mentioned arose from, or had not been discovered or remedied owing to the negligence of the employer, or of some person in the service of the employer, and entrusted by him with the duty of seeing that the ways, works, machinery, or plant were in proper condition.

- “(2) Under sub-section four of section one, unless the injury resulted from some impropriety or defect in the rules, byelaws, or instructions therein mentioned ; provided that where a rule or byelaw has been approved or has been accepted as a

²⁴ This sub-section is inserted for the sake of completeness, but it has no bearing upon printers.

proper rule or byelaw by one of Her Majesty's Principal Secretaries of State, or by the Board of Trade or any other department of the Government, under or by virtue of any Act of Parliament, it shall not be deemed for the purposes of this Act to be an improper or defective rule or byelaw.

- “(3) In any case where the workman knew of the defect or negligence which caused his injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer or some person superior to himself in the service of the employer, unless he was aware that the employer or such superior already knew of the said defect or negligence.”

SECT. 3. *Limit of compensation.*—“The amount of compensation recoverable under this Act shall not exceed such sum as may be found to be equivalent to the estimated earnings, during the three years preceding the injury, of a person in the same grade employed during those years in the like employment and in the district in which the workman is employed at the time of the injury.”

SECT. 4. *Limit of time for recovery of compensation.*—“An action for the recovery under this Act of compensation for an injury shall not be maintainable unless notice that injury has been sustained is given within six weeks, and the action is commenced within six months from the occurrence of the accident causing the injury, or, in case of death, within twelve months from the time of death: Provided always, that in case of death the want of such notice shall be no bar to the maintenance of such action if the judge shall be of opinion that there was reasonable excuse for such want of notice.”

SECT. 5. *Money payable under penalty to be deducted from*

compensation under Act.—“There shall be deducted from any compensation awarded to any workman, or representatives of a workman, or persons claiming by, under, or through a workman in respect of any cause of action arising under this Act, any penalty or part of a penalty which may have been paid in pursuance of any other Act of Parliament to such workman, representatives, or persons in respect of the same cause of action ; and where an action has been brought under this Act by any workman, or the representatives of any workman, or any persons claiming by, under, or through such workman, for compensation in respect of any cause of action arising under this Act, and payment has not previously been made of any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action, such workman, representatives, or person shall not be entitled thereafter to receive any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action.”

SECTION 6 provides that all actions under the Act shall be brought in a County Court (in Scotland, Sheriff's Court ; in Ireland, Civil Bill Court), with power to remove them to a superior court as in other County Court actions. It also provides that the judge may have assessors, and empowers the making of rules, &c.

SECT. 7. *Notice of injury.*—“Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

“The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

“The notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last-known place of residence or place of business ; and, if served by post, shall be deemed to have been served at the time when a letter containing the same would be delivered in the ordinary course of post ; and, in proving the service of such notice, it shall be sufficient to prove that the notice was properly addressed and registered.

“Where the employer is a body of persons corporate or unincorporate, the notice shall be served by delivering the same at or by sending it by post in a registered letter addressed to the office, or, if there be more than one office, any one of the offices of such body.

“A notice under this section shall not be deemed invalid by reason of any defect or inaccuracy therein, unless the judge who tries the action arising from the injury mentioned in the notice shall be of opinion that the defendant in the action is prejudiced in his defence by such defect or inaccuracy, and that the defect or inaccuracy was for the purpose of misleading.”

SECT. 8. *Definitions.*—“For the purpose of this Act, unless the context otherwise requires,

“The expression ‘person who has superintendence entrusted to him’ means a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour :

“The expression ‘employer’ includes a body of persons corporate or unincorporate :

“The expression ‘workman’ means a railway servant and any person to whom the Employers and Workmen Act, 1875, applies.”

SECTS. 9 and 10 provide that the Act shall come into operation on the 1st Jan., 1881, and shall continue in force till the 31st December, 1887, and to the end of the then next Session of Parliament, unless Parliament shall otherwise determine. Actions commenced before that period to be continued as if the Act had not expired. It is also pro-

vided that the Act may be cited as the Employers' Liability Act, 1880.

Having thus set out verbatim all the principal clauses of the Statute, which, from the complexity of their provisions, has been deemed to be almost necessary, let us deal with the subject in a different manner, and so help to elucidate it.

1. *Who may have the benefit of the Act.*—Every person has the benefit of the Act who comes within the words "railway servant," and "workman" as defined by the Employers and Workmen Act, 1875, Section 10 of which enacts that "the expression 'workman' does not include a domestic or menial servant, but, save as aforesaid, means any person who, being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer, whether the contract be made before or after the passing of this Act, be express or implied, oral or in writing, and be a contract of service, or a contract personally to execute any work or labour." The question has several times been raised as to whether a particular servant is a "workman" within the meaning of the Act, and the test seems to be, "Was the person employed for *manual labour*?" If he was, he is a "workman."²⁵ A man whose

²⁵ Per Lindley, L. J., in *Grainger v. Aynsley* (1880), 6 Q. B. D. 182. In *Morgan v. Lond. General Omnibus Co.* (1884), 14 Q. B. D. 832, an omnibus conductor was held by the Court of Appeal *not* to be a "workman;" and in *Jackson v. Hill* (1884), 13 Q. B. D. 618, a person having a knowledge of mechanics and engaged to assist his employer as a practical working mechanic in developing ideas and inventions suitable to the business of the firm was also held *not* a "workman." In *Stuart v. Evans* (1883), 49 L. T. 138; 31 W. R. 706, a slater paid by the piece and employed by the defendant to slate a house was held to be a "workman." But persons, such as printers and builders, who contract to do work for others are not "workmen." *Hardy v. Ryle* (1829); 9 B. & C. 603; *Lancaster v. Greaves*, 9 B. & C. 628; *Exp. Johnston* (1839), 7 Dow. 702.

*Bishop v
Lells 1858
17. 47 401.
overseer in a
printing office
an artificer
Macdonald
Law Officer
as a servant*

ordinary work is not manual labour, but who "lends a hand" when required, is not a "workman."²⁶ It may be gathered, therefore, that working overseers, compositors, pressmen, machine-minders, laying-on and taking-off boys, binders, persons who work cutting and other machines, engine-men, stokers, and labourers, and generally all persons who may be called the "operatives" in a printing-office are "workmen" within the Act; but superintendents and managers not usually engaged in manual work, readers, clerks, and errand-boys are not "workmen" within the Act.

2. *Who are liable under the Act.*—All employers, including companies.²⁷

3. *When they are liable.*—Employers are liable only when all the following things combine :—

1. A workman employed by them has sustained injury ;
2. The injury has been sustained by reason of one or more of the causes set out in Section 1 of the Act, such section being read together with Section 2 ;
3. Due notice of the injury has been given as required by Sections 4 and 7 ;
4. The action has been brought within six or twelve months of the date of the injury (as the case may be) as provided by Section 4.
5. The facts are such that the plaintiff could have recovered at common law had he not been a servant of the defendant, and had the common law been amended by provisions such as those implied in Sub-section 3 of Section 2 of the Act.²⁸

²⁶ *Davies v. Berwick* (1861), 30 L. J. Mag. Cas. 84.

²⁷ See *Morrison v. Baird and Co.* (1883), 10 Ct. of Sess. Cas. 271, a case where there were super-employers and a sub-employer, and the super-employers were held liable.

²⁸ It is difficult to say how far the meaning of the last part of Section 1 is controlled by this sub-section. Section 1 would seem to

If any one of these is not proved the plaintiff fails in his action.

To what extent the employer is liable.—The plaintiff cannot recover more than a sum equivalent to earnings for three years immediately preceding the accident. (Sect. 3.) This does not mean necessarily the wages the person *actually* received during the three years prior to the accident, but wages which persons in a similar position to his were ordinarily getting in the neighbourhood during that period. These may in some cases be more and in others less than the plaintiff earned. It does not do in all cases to take the wages ordinarily earned *at the time of* the accident, and then multiply by the three years. This would answer well enough in the case of an ordinary compositor employed in London and aged thirty, where the maximum sum could be readily shown to be three years' wages at thirty-six shillings a week. But suppose the person injured to be a London machine-boy aged seventeen. We should have to take the average yearly earnings of a London machine-boy at the ages of fifteen, sixteen, and seventeen, and it is well known that machine-boys of fifteen do not earn such high wages as others over sixteen years of age, for what may be called Factory Act reasons among others.

Classes of Accidents.—The Act, it will be seen, provides for accidents arising from three main causes, viz., 1. Defects in the condition of the ways, works, machinery, or plant; 2. Rules or bye-laws or particular instructions; and 3. Negligence of certain classes of persons.

mean that the workman should have the *same* right as a stranger, or, in other words, that, in the cases specified, the doctrine of common employment (as to which see p. 73) should cease, but the last clause of Sect. 2 would seem to confer on the workman greater rights than a stranger has. See *Stuart v. Evans* (1883), 49 L. T. 138; 31 W. R. 706, where it was held that the defence of contributory negligence was not done away with by the Act, and *McGiffen v. Palmer's Iron Shipbuilding Co.* (1882), 10 Q. B. D. 5; 52 L. J. Q. B. 25; 47 L. T. 346.

1. *Defects.*—The words of the Act are not “defects in the ways, works, machinery, or plant,” but defects *in the condition* of the ways, &c. Where machinery is broken there is undoubtedly a defect both in it and its condition, but it is possible to conceive of cases in which there may be no defect in a thing itself, and yet a defect in its condition. Suppose a Wharfedale machine placed in a machine-room in such proximity to a wall that when the ink-table is driven out it comes within a few inches of the wall, and suppose an unsuspecting person to get squeezed against the wall by the ink-table, it is possible for the jury to find that there was a defect in the condition of the works, or of the plant, or machinery, and yet there may have been no defect in the works, or the plant, or the machinery themselves.

Machinery unsuitable for the purposes for which it is used comes within the phrase “defect in the condition of the machinery,” which does not apply simply to machinery which has *become* defective.²⁹ It would seem, therefore, that if machinery ought to be guarded or fenced, and is not, and an accident results therefrom, the plaintiff is entitled to recover.

The machinery or plant used must be fit for the purpose for which it is being used at the time of the accident, otherwise the defendant is liable. It is no defence to show *generally* that it is fit and proper machinery.³⁰

²⁹ *Heske v. Samuelson* (1883), 12 Q. B. D. 30; 49 L. T. 474 approved by the Court of Appeal in *Cripps v. Judge* (1884), 13 Q. B. D. 583; 53 L. J. Q. B. 517; 51 L. T. 428. In *Heske v. Samuelson* the workman was killed by a piece of coke falling from a lift. The lift consisted of two platforms, which ascended and descended alternatively. The evidence was that the accident arose either from the sides of the lift not being fenced so as to prevent coke from falling over, or from the lower platform not being roofed so as to protect those working on it from falling coke. The plaintiff was held entitled to recover against the deceased's employers.

³⁰ *Cripps v. Judge* (1884), 13 Q. B. D. 583; 53 L. J. Q. B. 517 (C.A.). Here the plaintiff was injured by reason of the breaking of

It would seem to be no defence that the employer had no reason to doubt the fitness of the machinery or plant for the purpose for which it was used, if a skilled person could have told that it was in fact not fit for such purpose, and the employer had not obtained the opinion of a skilled person on the point.³¹ The case on which this proposition rests will, however, one day, probably, be reviewed by a Court of Appeal. It certainly seems hard upon the employer.

The writer submits that it is not *every* "defect in the condition of the ways, works, machinery, or plant connected with or used in the business of the employer" which gives a workman injured thereby a right of action against his employer, but only such "defects" as would have rendered the defendant liable if the plaintiff had been a person not in his employ. In other words, that the workman has no better right than a stranger would have, except when he can bring himself within Sub-section 3 of Section 2.³²

Suppose the workman *knew* of the defects which caused his injury, can he recover against his employer? No ;

a ladder which was being used to support a scaffold. It was good enough as a ladder, but the jury found it was insufficient for the purpose for which it was being used at the time of the accident (*viz.*, as a support for the scaffold). The defendants were held liable.

³¹ *Fraser v. Fraser* (1882, Scotch case), 9 Ct. of Sess. Cas. 896. Here the deceased was employed as a workman to put up a lightning conductor, and was killed by the breaking of the rope supplied by the employer. It was proved that the rope was thick enough, and had been used for several days in raising stones of 3 cwt. There was no evidence to show what the defect really was, but experts said it might have been caused by a "nip" (a defect in the centre) of the rope, which might have been detected by the hand of a skilled person. No examination had taken place before the rope was used. *Held* that the defendant was liable, as he had not had the rope examined by a skilled person before using it on the occasion in question.

³² See the last part of Sec. 1 of the Act ; Note 28 above, and the text to which it refers.

unless he can show (a) that within a reasonable time he had given, or caused to be given, information as to the defects to the employer or to some person superior to himself³³ in the service of the employer; or (b) 1, that the employer or such superior already knew of the defect, and 2, that he, the workman, was at the time of the accident aware that the employer or such superior knew of the defect.³⁴ But it is conceived that it was not the intention of the legislature to relieve a workman from the consequences of his own negligence. If a machine is manifestly dangerous and the workman knows it, he cannot be allowed to recover damages if he voluntarily continues to use it and in so doing gets injured by it, even though he is aware that his employer knows it to be dangerous.³⁵

If the defect did not arise from the negligence of the employer, or the person entrusted by him with the duty of seeing that the ways, works, machinery, or plant were in proper condition, and if the employer, or such person, was guilty of no negligence in not having discovered or remedied the defect, the workman cannot sustain his action.³⁶

³³ This must mean some one superior *in command*, or some one who would have the right to get the defect remedied.

³⁴ See *McMonagle v. Baird and Co.* (1881), 9 Ct. of Sess. Cas. 364. Here a miner was injured by the falling in of the roof of a main roadway. The oversman had caused it to be partially secured, and had told the man to go on with his work under it. He admitted that he did not think it properly secured, but went on with his work expecting that men would come and complete the propping directly. He was held entitled to recover, the Lord Justice Clerk saying: "If there is a known danger which any one could see, that is one thing. But when he has reported a danger, and his report has been so far acted upon as to have the thing practically secure, and it has turned out the oversman was wrong, and the place was not secure, it would be a hardship, and it would be oppression to make the man suffer."

³⁵ See last note, and note 28; also page 75.

³⁶ See 2, Sub-sect. 2.

2. *Rules, Bye-laws, or Particular Instructions.*—An injured workman is entitled to recover damages against his employer if the injury resulted from the act or omission of a person in the service of the employer done or made in obedience to the rules or bye-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf.³⁷ But if the employer can show that the rules, bye-laws, or instructions were authorised or approved by Government, he will escape liability.³⁸

To prove a case of injury resulting from rules or bye-laws, all the person has to do is to prove the injury to have been caused by a workman employed by the defendant, to prove the rules or bye-laws, and to show that the act or omission that caused the injury was done or made in pursuance of such rules or bye-laws.

To prove a case of particular instructions, it will be necessary to show that particular instructions were given to the person causing the injury to do the act or make the omission from which the injury resulted, and that such instructions were given either by the employer or by some one duly authorised by the employer to give those instructions. The authority may be express, or it may be implied from the position of the parties and the circumstances of the case. But it is obvious that if the instructions were not authorised by the employer, the latter is not responsible.

3. *Negligence.*³⁹—An employer is usually made to suffer for the negligence of any of his servants, but when the person injured through such negligence is his own workman, the

³⁷ Sec. 1, Sub-sect. 3.

³⁸ Sec. 2, Sub-sect. 2.

³⁹ Negligence is defined to be “the omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs, would do; or the doing of something which a prudent and reasonable man would not do.”—*Addison on Tort.*

plaintiff must show that the negligent person was a person in the service of the employer *who has superintendence entrusted to him*,⁴⁰ and that the injury arose whilst such person was in the exercise of such superintendence⁴¹; or a person in the employer's employ *to whose orders or directions the workman was bound to conform, and did conform*, whereby he was injured.⁴² And even then the employer will escape liability if he can show that the workman knew of the negligence which caused his injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer, or some person superior to himself in the service of the employer, unless the workman shows that he was aware that the employer or such superior already knew of the said negligence.⁴³

In a claim under this head, the plaintiff must prove that the injury resulted from his conforming to an order or direction of some person in the defendant's employ, and that at the time he was *bound* to conform to that person's order or direction.

If he is ordered or directed to do something distinctly and manifestly dangerous, he will have no action against his employer if he is injured, because (as a rule) no man is bound to hazard life or limb at the request or command

⁴⁰ This means "a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour" (Sect. 8). The fact that the person superintending was at the time of the accident voluntarily assisting in manual labour does not of itself relieve the employer from liability. *Osborne v. Jackson* (1883), 11 Q. B. D. 619; 48 L. T. 642. Other cases on this point are *Shaffers v. General Steam Navigation Co.* (1883), 10 Q. B. D. 356; 52 L. J. Q. B. 260, and *Robbins v. Cubitt* (1882), 46 L. T. 535.

⁴¹ Sect. 1, Sub-sect. 2.

⁴² Section 1, Sub-section 3. Mention of the liability of railway owners to their servants under Sub-sect. 5 is purposely omitted as being outside the scope of this work.

⁴³ Sect. 2, Sub-sect. 3. If a man knows that his fellow-workman is negligent, and yet chooses to go on working with him, he cannot recover against his employer.

of another. So, too, if what he was ordered to do was outside the scope of his employment, for such an order he was not bound to conform to.⁴⁴

Notice of the Injury.—In order to render a master liable under the Act, it is necessary that due notice of the injury should be given him, unless, indeed, the injury causes death, in which case notice may be dispensed with.⁴⁵ The notice required must be given within six weeks of the injury, and it may either be delivered personally or posted. It is not necessary that it should be signed by the person injured, and it may, in fact, be given by any person. The Act does not furnish a form of notice, but it does specify what it shall contain, viz. :—

- a. The name and address of the person injured.
- b. A statement in ordinary language of the cause of the injury.
- c. The date of the injury.

Defects or inaccuracies in the notice which do not prejudice the employer, and are not made for the purpose of misleading, will not invalidate the notice.⁴⁶

The following practical instructions may be found useful in case of need.

If a workman should sustain injury under circumstances which it is thought give him a right to compensation from his employers, he should as soon as possible, and within

⁴⁴ In *Bunker v. Midland Railway Company* (1883), 47 L. T. 476 ; 31 W. R. 231, the plaintiff was a boy under 15 years of age, and employed by the Company as a street-van guard. By one of the Company's rules, which plaintiff knew, no boy under 15 was to drive a van, but on the occasion in question the defendants' foreman ordered him to drive. *Held* that the plaintiff could not recover, the order of the foreman not being one he was bound to obey. See too *Millward v. Midland Railway Company* (1884), 14 Q. B. D. 68.

⁴⁵ Sects. 4 and 7.

⁴⁶ Thus in *Carterv. Drysdale* (1883), 12 Q. B. D. 91 ; 32 W. R. 171, the date of the injury was omitted from the notice, yet the plaintiff was held entitled to recover.

six weeks of the accident at the latest, write out or get written out for him a notice in something like this form :—

“To Messrs. JONES AND SMITH (*the Employers*).

“GENTLEMEN,—I beg to give you notice that on Wednesday, the 3rd June, 1885, I sustained injury by reason of (*here state as well as possible the cause of the injury*, e.g., ‘the negligence of Edward Cooper, the machine-minder under whom I was working, in putting in motion a printing machine while I was engaged in greasing the cogs,’ or ‘the ink-table of a cylinder printing machine running out from the machine and crushing me against the wall,’ or ‘the machine on which I was set to work not being properly fenced’).

“Dated this 5th June, 1885.

(*Sign it*)

“THOMAS BROWN,

“Machine Boy.

“Address—18, Beta Street,

“Clerkenwell, E.C.”

If the person injured cannot for any reason sign the notice himself, a notice in the following form may be sent by his wife, or some friend :—

“26, Alpha Street, Clerkenwell,

“6th June, 1885.

“To Messrs. JONES AND SMITH (*the Employers*).

“GENTLEMEN,—I beg to give you notice that on Wednesday, the 3rd June, 1885, Thomas Brown, a machine-boy in your employ, whose address is 18, Beta Street, Clerkenwell, E.C., was injured by reason of (*here state the cause of injury as instructed above*).

“I am, gentlemen,

“Your obedient servant,

(*Sign it*)

“WILLIAM ROBINSON.”

Let a copy of the notice be made and carefully kept. When the notice has been written out and signed, let it be

put in an envelope and properly addressed to the employers at their (chief) place of business, and then let it be taken by an intelligent person to a post-office, and there *registered and posted*. The postmaster will give a receipt for the letter, and this should be carefully preserved, and the person who took the letter to the post-office should make a memorandum on the back of the receipt to the effect that he posted the letter on such-and-such a day. This person may at the trial have to give evidence of the fact.

There are other ways of serving the notice ;⁴⁷ but sending it by post as a registered letter is the best way, as then the employers will be presumed to have received it in ordinary course.

Bringing the Action.—If it becomes necessary to institute an action, it must be commenced in the County Court within *six months* of the date of the accident, unless the injury results in death, when the representatives of the deceased have twelve months from the date of the accident within which to commence proceedings.

The person injured (or his representatives, if he be dead) should not commence or undertake an action of this kind in person if they can possibly help it, but should seek the advice of a solicitor of skill and repute.

Where the person injured dies and leaves a wife, husband, father, stepfather, stepmother, grandparent, son, daughter,⁴⁸ grandson, granddaughter, stepson, or step-daughter, the executors or administrators of the deceased may bring the action for damages for the benefit of such relatives ;⁴⁹ other relatives have no claim for compensation. If there is no executor or administrator, or if the executor or administrator does not within six months after the death of the deceased bring the action, it may be brought by or

⁴⁷ See Section 7.

⁴⁸ Illegitimate children have no claim (*Dickinson v. G. E. Ry. Co.*, 33 L. J. Ex. 91).

⁴⁹ 9 & 10 Vict., c. 93 (Lord Campbell's Act).

in the names of all or any of the persons for whose benefit it would be brought by the executor or administrator.⁵⁰

The Damages recoverable.—We have already seen that the damages recoverable are limited by the Act, but it does not follow that in every case the plaintiff is to have the *maximum* sum allowed: he is to be properly compensated, that is all. “I may take the common case of a labourer receiving an injury, which has kept him out of work perhaps six months; his evidence may be that before the time of the accident he was earning 25s. a week, that during twenty-six weeks he has been wholly incapacitated for work, that for ten weeks afterwards he has been able to earn only 10s. a week, and that he will not get into full work again for twenty weeks. The plaintiff will be entitled to 25s. for each of the twenty-six weeks, and to 15s. for each of the ten and twenty weeks. He is also entitled to some amount for his bodily sufferings and for his medical expenses; and in this manner the compensation to be awarded to him is estimated. I have put a case where a definite term may be fixed upon within which the party injured will recover; but suppose a case in which no definite term can be fixed: in that case the direction to the jury is that they must consider for themselves how long the plaintiff will be incapacitated from earning his livelihood or practising his profession, but that they must also take into account the chance of his losing employment if he had not met with the accident.”⁵¹

The jury are not to give less because the plaintiff was insured against accidents.⁵²

When an action is brought under Lord Campbell’s Act the jury have to estimate only the pecuniary loss the persons on whose behalf the action is brought have sustained;

⁵⁰ 27 & 28 Vict., c. 95.

⁵¹ Per Lord Justice Bramwell in *Phillips v. L. & S. W. Ry. Co.* (1879), 5 C. P. D. at p. 287.

⁵² *Bradburn v. G. W. Ry. Co.* (1874), L. R. 10 Ex. 1; 44 L. J. Ex. 9.

but they must not give anything for wounded feelings, funeral expenses, or mourning, and money received under an insurance against accidents must be taken into account, because that money could never have been received had not the deceased met his death by accident.⁵³ But the present writer conceives, notwithstanding the statement in "Mayne on Damages," 3rd Edn., p. 449, that no deduction is to be made in respect of money received under an ordinary life insurance policy, because that would be payable certainly at some time or other. The jury may, however, be rightly told to deduct what the deceased would in all probability (according to the actuarial tables) have paid in premiums on such insurance had not his life been cut short by the accident.⁵⁴

(c) *As Respects Characters.*

A master is not bound to give his servant a character. Should he give one which is defamatory, the servant cannot sustain an action for libel or slander against him, unless it be proved that the master in giving the character was actuated by malice. In other words, a character, however bad and however unjust, is privileged, unless the master gave it in bad faith. But the privilege extends only when the character is given in the discharge of some public or private duty. When a person who professes to be intending to employ the servant asks the former employer for the servant's character, it is the duty of that employer to give the character he honestly believes the man entitled to, and if his opinion or belief is erroneous, he will not be responsible for stating it, so long as he acts in good faith, and this notwithstanding that he may do the servant great harm by giving the wrong character. But there is no duty on a master to tell every one who asks the character of his servant, still less to state it voluntarily; in such cases,

⁵³ See *Bradburn v. G. W. Ry. Co.* (*ubi supra*).

⁵⁴ See *Hicks v. Newport, &c., Ry. Co.* (1863), 4 B. & S. 403.

unless there exist confidential relation between the parties, there is no privilege, and the master will be liable to the servant for any slander or libel he may utter.⁵⁴

6. *The Master's Rights against Third Persons.*

A master has a right of action and may recover damages against any one who wrongfully deprives him of his servant's services.

Actions of this kind are sustainable where a servant has been seduced, has been bodily injured, or has been enticed away ; but, oddly enough, if the injuries have caused the death of the servant, the master has no remedy.⁵⁵ As to enticing away, it has been held⁵⁶ that the action may be brought when the servant was a journeyman working on piece, and not hired for any fixed period. But an action will not lie for inducing a servant to leave at the end of the term for which he was engaged, although but for such inducement he would have stayed on.⁵⁷ As a rule, in these actions it is not necessary for the plaintiff to prove a binding contract of service : it is enough that he received the services ; but where an action was brought for enticing away an apprentice, and the deed of apprenticeship was shown to be void, the plaintiff was nonsuited.⁵⁸

An action may be maintained against persons who knowingly harbour or employ the servant of another. In these cases, however, a contract by the servant to serve the plaintiff must be proved.⁵⁹

7. *The Rights of Third Persons against the Master.*

Generally, when a servant, within the scope of the authority committed to him by his master, does any act,

⁵⁴ *Odgers on Libel and Slander*, pages 200-219.

⁵⁵ See *Osborne v. Gillett* (1873), L. R. 8 Ex. 88 ; 42 L. J. Ex. 53.

⁵⁶ In *Hart v. Eldridge* (1774), Cowp. 54. See also *Lumley v. Gye* (1853), 22 L. J. Q. B. 463 ; and *Bowen v. Hall* (1881), 6 Q. B. D. 333.

⁵⁷ *Nichol v. Martin* (1799), 2 Esp. 734.

⁵⁸ *Coc v. Muncey* (1859), 6 C. B. N. S. 375.

⁵⁹ *Sykes v. Dixon* (1839), 9 A. & E. 693 ; *Pilkington v. Scott* (1846), 15 M. & W. 657.

the master becomes bound by it just as if he had done the act himself. The authority may be express, or implied from the circumstances of the case. But if the servant did not act within the scope of his authority, the master is not bound. The scope of authority is not commensurate with authority derived from actual instructions. Thus, when a man authorised his traveller to sell a log of mahogany, but did not tell him to make any statement as to its condition, and the traveller represented to the intending purchaser that it was perfectly sound, upon the faith of which representation the purchase was made, and it turned out that the log was unsound, it was held that the employer was liable for the misrepresentation of the traveller, the latter having acted within the scope of his authority in making it.⁶⁰ And a person is even liable for the fraud of his servant or agent, when it is committed within the scope of the latter's authority.⁶¹

It follows, therefore, that contracts entered into by servants or agents invested with the authority of their masters or principals bind the latter. But the authority must be shown to exist; and it can only spring from the words or conduct of the master or principal, or from absolute necessity. Thus, if I give my servant money, and send him to a shop to buy goods for me for cash, and the servant buys them for me on credit, and keeps the money, I am not liable, unless I have on previous occasions allowed my servant to buy goods for me of that shopkeeper on my credit, and then I am liable, because from the previous dealings the shopkeeper may fairly believe that this time also the servant had my authority to buy on credit. And a wife is in the same position as a servant: if her husband forbids her to buy goods on credit he is

⁶⁰ *Udell v. Atherton* (1861), 7 H. & N. 172; 30 L. J. Ex. 337.

⁶¹ *Barwick v. English Joint Stock Bank* (1867), L. R. 2 Ex. 259; 36 L. J. Ex. 147; *Mackay v. Commercial Bank of New Brunswick* (1874), L. R. 5 P. C. 394; 43 L. J. P. C. 31; *Weir v. Ell* (1877), 3 Ex. D. 238; 47 L. J. Ex. 704, and other cases.

not liable, and the onus lies on the plaintiff to show that the husband did authorise the wife to pledge his credit.⁶²

So, too, a master is liable for all wrongs done to third persons by his servants or agents acting in the course of their employment or within the scope of their authority. Nice questions sometimes arise as to whether the act in question is or is not within the scope of the authority of the person doing it. The following illustrations may serve as some sort of guide in this matter: (a) A printer keeps a horse and cart for delivering his work; one day while on his way to a customer his man drives it so negligently as to run into and damage a brougham: the printer is liable to compensate the owner of the brougham. (b) The man is sent out with his horse and cart on his master's errand; he finds a friend and takes him for a drive, intending to do the errand afterwards; while on this drive he runs into a brougham: the master is still liable. (c) The driver of the cart is sent out on his master's errand, but he goes off to the races instead, and on the way drives into a brougham: the master is not liable.⁶³ (d) A clerk goes, contrary to orders, to a lavatory reserved exclusively for his master's use, and leaves the tap on, whereby the goods of a printer on the floor below are saturated with water: the master is not liable.⁶⁴ (e) I put my children into my carriage and tell my coachman to drive slowly: he drives fast, and injures the plaintiff: I am liable, notwithstanding my instructions to drive slowly.⁶⁵ (f) My servant negligently leaves a horse and cart unattended in the street: a passer-by strikes the horse, which starts off and runs into the plaintiff's trap: I am liable.⁶⁶ (g) I send my man to deliver

⁶² *Debenham v. Mellon* (1880), 6 App. Cas. 24 (H. Lds.).

⁶³ *Joel v. Morrison* (1834), 6 C. & P. 591.

⁶⁴ *Stevens v. Woodward* (1881), 6 Q. B. D. 318.

⁶⁵ See *Limpus v. London General Omnibus Co.* (1862), 1 H. & C. 526; 32 L. J. Ex. 35.

⁶⁶ *Mildge v. Goodman* (1831), 5 C. & P. 190.

goods : he in the ordinary course takes up a trap in the foot pavement to pass the goods through, but leaves the hole unguarded ; the plaintiff falls down the hole and is injured : I am liable.⁶⁷

Masters are liable to third persons for the consequences of their negligence in employing incompetent servants.⁶⁸

A question sometimes arises whether the person doing the act in respect of which the action is brought was the servant of the defendant, or the contractor employed by him. The distinction is important, because, as a general rule, a person who employs a contractor to do work for him incurs no liability for the act of the contractor or his servants.⁶⁹

8. *The Rights of Third Persons against Servants.*

A servant, who as agent for his master and in his name, enters into a contract with a third person, is not personally liable upon it. But if he has not his master's authority, express or implied, he is personally liable. If the servant does not disclose the fact that he is contracting for another, he is personally liable on the contract if the other party chooses to make him so.⁷⁰

A servant is not liable to third persons for omitting to do something he should have done ; but he is liable for any wrong he actually commits,⁷¹ and the fact that he has committed it at the request or for the benefit of his master will be no answer to an action against him. Thus, where a servant sold for his master's benefit goods belonging to a third person, he was held liable, although he was ignorant that they were not his master's.⁷²

⁶⁷ *Whiteley v. Pepper* (1877), 2 Q. B. D. 276 ; 46 L. J. Q. B. 436.

⁶⁸ *Wilson v. Merry* (1868), L. R. 1 Sc. & Div. App. 326.

⁶⁹ *Reedie v. L. & N. W. Ry. Co.* (1849), 4 Ex. 244.

⁷⁰ See Anson on Contract, pp. 337—346.

⁷¹ *Lane v. Cotton* (1701), 12 Mod. 488.

⁷² *Cary v. Webster* (1716), 1 Strange, 480.

A servant who executes his master's unlawful orders is personally responsible for his acts. Thus, if he, at his master's bidding, assaults a man, the latter may maintain an action against him, or may prosecute him criminally.

A servant who knowingly joins with and assists his master in the commission of a fraud is responsible for the consequences. "All persons directly concerned in the commission of a fraud are to be treated as principals. No party can be permitted to excuse himself of the fraud that he acted as the servant of another."⁷³

⁷³ Per Lord Westbury in *Cullen v. Thompson's Trustees* (1862), 4 Macqueen, 424.

CHAPTER VIII.

MASTER AND APPRENTICE.

AN apprentice is a person who has undertaken to serve some particular individual or body of individuals for a specified time, in order to learn an art or trade which that individual or body of individuals has undertaken to teach him. In many respects, so far as his legal rights and liabilities are concerned, he differs little from a journeyman, but in others he is subject to special rules of law, and in many trades he is also subject to special customs.

An apprentice for more than a year must be bound by a contract in writing. The contract is usually in the form of a deed or indenture of apprenticeship.

An indenture or other instrument of apprenticeship must be stamped with a 2s. 6d. stamp if no premium be paid, and if there be a premium, then with a 5s. stamp for every £5 and fractional part of £5 of the amount or value of the premium or consideration.⁷⁴ The premium or consideration must be truly stated in the indenture under heavy penalty ; if it is not, the indenture is void.⁷⁵

The indenture must be signed and sealed by the master and by the apprentice, even though the latter be an infant. The apprentice will be bound by the terms of the indenture, unless he be an infant and they be not beneficial to him.⁷⁶

⁷⁴ Stamp Act, 1870. Paupers' apprenticeships are not liable to stamp duty.

⁷⁵ *Ibid.*

⁷⁶ See *Meakin v. Morris* (1884), 12 Q. B. D. 352 ; 53 L. J. M. C. 72]. In this case a minor was apprenticed by a deed containing a provision that the master should not be liable to pay wages to him so long as the master's business should be interrupted or impeded by or in consequence of any strike or turn-out, and that the apprentice might, during any such turn-out, employ himself in any manner and with any person for his own benefit. *Held*, that this provision not being for the benefit of the infant apprentice, the deed could not be enforced against him.

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It is usual for the father or other guardian of the apprentice to be made a party to the indenture, and for him to covenant with the master that the apprentice shall serve him well and faithfully during the term for which he is bound. In such a case, if the apprentice absents himself from his master's employment or misconducts himself, the father or guardian may be sued for damages upon the covenant.

By consent, apprentices in the printing trade are often assigned or turned over by one master to another. Such apprentices are called "turnovers." They ought to be re-bound to the new master by an indenture of assignment, which all parties to the original indenture must execute. The stamp on such an assignment will be the same as on the original indenture, but in no case more than 10s., unless the consideration for the transfer exceeds £100. The London Society of Compositors has a rule that all turnovers must be legally assigned or re-bound to their new masters; but it is a rule perhaps more honoured in the breach than in the observance. It is doubtful how far a turnover not properly assigned or re-bound is an apprentice in the eye of the law.

If the master is adjudicated bankrupt, either the master or the apprentice may give notice in writing to the trustee that the apprenticeship is to be at an end, and thereupon it will cease; either party or any one on his behalf may, however, ask the trustee to transfer the indenture to some other person, and the trustee may do so if he thinks fit.

An apprentice cannot be transferred to a new master against his will, except when by the indenture he has been bound to serve the master's "assigns." By an ancient custom of the City of London, however, apprentices of citizens may be assigned without their consent.

When the term of apprenticeship is ended the apprentice is, by custom, entitled to have the indenture of

⁷⁷ Bankruptcy Act, 1883 (46 and 47 Vict., c. 56), sect. 41.

apprenticeship, and it is proper for the master to endorse on it a certificate that the apprentice has duly served out his time.

If the master dies, the apprenticeship is at an end, unless the indenture contains words showing that the apprentice is to serve the master's executors. In *Cooper v. Simmons* (1862), 31 Law Journal Reports, Magistrates' Cases, 138, a lad, John Cooper, bound himself by the indenture to serve Thomas Simmons, his executors and administrators for seven years. Thomas Simmons died, leaving his wife his executrix, who carried on the business. It was held that the lad must serve out his time with her.

If a premium have been paid with the apprentice, in the absence of any provision in the indenture, no part of it will be recoverable on the apprenticeship coming to an end by the death of the master or the apprentice.⁷⁸

In the case of the master's bankruptcy, provision is made by the 41st section of the Bankruptcy Act, 1883, for a return of a proportionate part of the premium paid with an apprentice, on application being made to the trustee.

When an indenture of apprenticeship is cancelled under the Employers and Workmen Act, 1875, the magistrate has power to order the whole or any part of the premium paid on the binding of the apprentice to be repaid.

If a father has paid a premium to have his son taught a trade, and the master neglects to teach the trade properly, the father cannot recover back the premium, but must bring an action for damages.

The Master's Rights.

A master has the exclusive right to the services of the apprentice in the trade which the latter is to learn, during all ordinary hours of work throughout the whole term of the apprenticeship. It follows, therefore, that an apprentice may not quit the service of his master during the term of the apprenticeship, except with the master's consent.

⁷⁸ *Whincup v. Hughes* (1871), L. R. 6 C. P. 78.

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A master cannot compel his apprentice to work beyond the ordinary working hours, unless the deed of apprenticeship provides otherwise.⁷⁹

A master cannot compel his apprentice to do work of a kind not fairly coming within the scope of the trade the apprentice is to learn. The master has a right to all the earnings of the apprentice. He may even sue for what the apprentice has earned when serving with some other person.

Any person who entices away, knowingly employs, or harbours the apprentice of another is liable to an action by the master of the apprentice. Therefore, if a printer employ a lad who applies to him for work and afterwards discover that he is an apprentice, he should at once send him back to his master, even though he may have taken him as his own apprentice.

A master has the right to inflict moderate corporal punishment upon his apprentice for misconduct. His overseer, however, has no such right. It is very seldom a master exercises this right in these days, the more usual course being to take the apprentice before a magistrate for correction.⁸⁰

A master who pays wages to his apprentice may, in the writer's opinion, deduct from such wages reasonable sums by way of damages if the apprentice has caused him loss by gross negligence, or by absenting himself.⁸¹

If an apprentice should enlist in the army, the master, if he wants to recover him, must, within one month of the

⁷⁹ See *Scott v. Howell and Burgess* (*Printers' Register*, Jan., 1885, p. 135; *Printing Times* s.m.)—a case decided by the Chamberlain of London. Mr. Scott required his apprentices to work 59½ hours a week, and they refused, alleging that 54 hours were the normal hours in the London printing trade. The Chamberlain after hearing evidence found that this was so, and decided that the master could not compel the apprentices to work longer.

⁸⁰ See *in/ra*.

⁸¹ See *ante*, page 46.

date of the apprentice leaving him, go before a justice of the peace and make oath in the prescribed form that the lad was his apprentice and absconded, and afterwards he must apply to a court of summary jurisdiction (a police court) for an order directing the apprentice to be given up to him.⁸²

The Apprentice's Rights.

The apprentice has a right to be properly taught the trade or trades stipulated for in the indenture. If he be not so taught, he may bring an action for damages against his master.

A master who carries on more than one trade, and takes an apprentice to learn all, commits a breach of his contract if he discontinues one of the trades.⁸³ So, too, if an apprentice be bound to two partners and one of them retires, there is a technical breach of the contract entitling the apprentice to sue for damages.⁸⁴ But ordinarily the damages would be nominal.

An indoor apprentice is entitled to receive from his master suitable lodging and wholesome and sufficient food; the master must also provide him with proper medical attendance and medicine when he is ill, unless there be a contrary provision in the indenture. Wilful neglect on the part of the master to provide his indoor apprentice with necessary food, clothing, or lodging, whereby the health of the apprentice is seriously injured, is an indictable offence, punishable with two years' imprisonment with hard labour.⁸⁵ A case of this kind may also be dealt with by magistrates summarily under 38 & 39 Vict., cap. 86, sect. 6, the maximum punishment then being a fine of £20,

⁸² Army Act, 1881 (44 and 45 Vict., c. 58), sect. 95.

⁸³ *Ellen v. Topp* (1851), 6 Ex. 424; *Datty v. Monks* (1864), 12 L. T. N. S. 832.

⁸⁴ See *Couchman v. Sillar* (1870), 22 L. T. N. S. 480.

⁸⁵ 24 and 25 Vict., c. 100, s. 26.

or imprisonment with or without hard labour for six months.

An apprentice is entitled to be taught the whole of the trade stipulated for, and not one branch of it only. In Scotland, where a stonemason taught his apprentice only how to hew stones, it was held that the contract was broken.⁸⁶

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It is implied in a contract of outdoor apprenticeship that the master shall, throughout the term, carry on business in or near the same locality as when the indenture was signed. *Paton v. Western*,⁸⁷ decided by the Court of Appeal in 1882, is the leading case on this point. There the plaintiff was bound apprentice to the defendants "and their partners and successors in business" for six years in the trade of an engineer, and his father covenanted to provide him with board, clothing, and lodging. There was no stipulation in the indenture as to the defendant carrying on the business in any particular place. At the date of the indenture the business was carried on in Lambeth, but before the six years were ended the firm dissolved partnership, and two firms were established, one in Lambeth, consisting of two partners in the old firm, and the other at Derby, consisting of the remaining partners in the old firm. The manufacturing part of the old business was transferred to the Derby firm, and the selling part was made over to the London firm. All the partners agreed that the plaintiff's services should be transferred to the Derby firm, and they accordingly required him to attend the works at Derby. The plaintiff refused to go, brought an action to recover damages, and was awarded £50. The defendants appealed, and the Court of Appeal held that the apprentice was not bound to go to Derby, and was entitled to the damages awarded, and, further, that as the business was not carried on in its

⁸⁶ Fraser's Master and Servant, by Campbell, p. 360.

⁸⁷ 9 Q. B. D. C36.

entirety by either of the two new firms, neither of them was the successor of the original firm, or entitled to the services of the apprentice. Of course, a slight change of locality, not necessitating a change in the place of residence of the apprentice, is not a breach of the contract; and, again, if the apprentice is an *indoor* apprentice, the master may remove as often and as far as he likes, so long as he does not go out of the country; and the apprentice must go with him.

An apprentice cannot lawfully be dismissed by his master even for theft or other gross misconduct, unless there be a stipulation to that effect in the indenture. The master's remedy is to chastise the apprentice, or to take him before the magistrate, under the Employers and Workmen Act, as stated below, when in a proper case the indenture will be cancelled. However, if the apprentice grossly misconducts himself, and his master thereupon dismisses him, he may fairly brave any action the apprentice may dare to bring.

If a master behaves badly to his apprentice, the best course for the latter to adopt is to lay his case before the magistrate, or failing that, to absent himself, and leave the master to take such steps against him as he may think proper, when the whole matter may be gone into, and if a proper case be made out, the indenture may be cancelled. Niggardliness and unkindness, and even threats on the part of a master are not matters giving any legal cause for complaint, however hard it may be upon the apprentice to have to serve such a man. But it was held by Mr. Justice Grove that if an apprentice had reasonable grounds for fearing that his master would actually inflict grievous bodily harm on him, he might absent himself from his service.⁸⁸

A minor who is apprenticed is bound by the indenture until he be twenty-one years of age, but on reaching that

⁸⁸ *Halliwell v. Counsell* (1878), 38 L. T., N. S. 176.

age he may, if he chooses, declare that he will no longer serve under the indenture, and the master will have no claim against him.⁸⁹ He must, however, disaffirm the indenture within a reasonable time of his coming of age, or he will be held to have elected to be bound by it. The proper way of disaffirming the indenture is by giving the master written, or even verbal notice to that effect.⁹⁰ The apprentice must, however, remember that if when he comes of age his term of apprenticeship has not run out, and he refuses to be bound by the indenture, every person who joined with him in the indenture and covenanted that he should serve his master for the full term is liable to an action for damages by the master.⁹¹ This, therefore, should operate as a serious check upon any apprentice who thinks of throwing up his indenture as soon as he is twenty-one years of age.

An apprentice who works overtime is, in the absence of provision to the contrary in the indenture of apprenticeship, entitled to payment therefor.⁹²

It may here be stated that where a son under age lives with his father, who keeps him, the father is entitled to the earnings of the son.

Legal Proceedings.

Complaints by a master against his apprentice, and *vice versa*, are in general heard by courts of summary jurisdiction—that is, in London, by the aldermen or police magistrates, and in the provinces by the stipendiary

⁸⁹ *Exp. Davis* (1794), 3 T. R. 715; *Wray v. West* (1866), 15 L. T. N. S. 180.

⁹⁰ *Moore v. Smith* (1875), 39 J. P. 772.

⁹¹ See *Richardson v. Harrison*, *Printers' Register*, August, 1883, p. 40; *Printing Times*, same month, p. 215, where the master recovered large damages against the apprentice's father.

⁹² See *White v. Smith*, *Printers' Register*, Nov., 1884, p. 99, where the employer was ordered by Alderman Waterlow to pay the apprentice 6s. for overtime, he having worked more than fifty-four hours in a week.

magistrates or justices of the peace. The powers of these courts in this respect are conferred by the Employers and Workmen Act, 1875 (38 and 39 Vict., c. 90); they are as follows :—

- a.* To make an order directing the apprentice to perform his duties under the apprenticeship.
- b.* To cancel the indenture of apprenticeship, and if the court thinks right to do so, to order the whole or any part of the premium paid with an apprentice to be returned.
- c.* To imprison an apprentice for not more than 14 days at a time, when an order directing him to perform his duties has been made, and he has, for a full month from the making of the order, failed to comply with it.
- d.* To compel the attendance of any person liable under the instrument of apprenticeship for the good conduct of the apprentice, and, either in substitution for, or in addition to, any order against the apprentice himself, to order such person to pay damages to the master, and (or) to take security from such person, if he is willing to give it, for the future good conduct of the apprentice.⁹³

In addition, the courts of summary jurisdiction have, in cases between master and apprentice, all the powers conferred upon them by the Act in cases between employer and workman.⁹⁴

The police courts have no jurisdiction in the cases of apprentices with whom more than £25 premium has been paid.⁹⁵ In such cases the party aggrieved must bring an action either in the High Court of Justice or the County Court.

⁹³ Sections 6 and 7.

⁹⁴ Section 6.

⁹⁵ Section 12.

In London, the Chamberlain of the City has jurisdiction in all matters respecting City apprentices bound in accordance with the customs of the City. This jurisdiction is of long standing, and is concurrent with that of the magistrates. The Chamberlain has power to commit offending apprentices to confinement in Bridewell.⁹⁶

⁹⁶ *Vide* the *Printers' Register* for Jan., 1885, pp. 129 and 137 ; and the case of *Scott v. Howell*, cited *ante*.

CHAPTER IX.

THE FACTORY ACTS AND KINDRED LAWS.

1. *The Factory Acts.*

THERE have been several Acts to regulate the employment of women and young people in factories and workshops, but there are but two now in force, that of 1878 (41 Vict. c. 16), which consolidated the whole law on the subject, and the short Act of 1883, which, so far as this treatise is concerned, is important only for two sections declaring the meaning of passages in the former statute. As the Act of 1878 is of great length and its provisions are clothed in the somewhat prolix language adopted by parliamentary draughtsmen, it is thought best not to print it here *in extenso*, but to give the reader an abstract of it in as succinct a form as possible. Much of the Act has reference to trades distinct from printing: of these parts no notice is here taken.

Letterpress printing works, bookbinding works, and paper mills are classed as non-textile factories. Lithographic printing works are "factories" or "workshops" according as mechanical power is used or not.

A "child" is a human being of either sex under 14 years of age.

A "young person" is a person who is between 14 and 18 years of age.⁹⁷

A person of 18 years and upwards is a "man" or a "woman."

"Parent" includes guardian.

"Week" means the period between midnight on Saturday and midnight on the following Saturday.

"Night" means the period between 9 p.m. and 6 a.m.

"Mill gearing" includes every shaft, wheel, drum, or pulley by which the motion of the first motive power is communicated to any machine.

⁹⁷ A child of 13 who possesses an authorised educational certificate is to be considered a young person.

General Provisions.

Every person who starts a factory must give notice to the inspector within one month, stating the nature of the factory, the kind and amount of motive power, and the name of the firm carrying it on. Penalty, £5. (s. 75.)

At the entrance of every factory, and in such other places as the inspector may prescribe, must be posted the official abstract of the Act, with the notices appended thereto duly filled up. (s. 78.)⁹⁸

The inspector is to have free access to factories and workshops at all times. Whoever obstructs him in his duty is liable to a heavy fine. (s. 68.) When he applies for admission he must, if required, produce the certificate of his appointment as inspector. (s. 70.)

Cleanliness.—The factory must be kept clean and free from effluvia arising from drains, &c. It must be properly ventilated and not overerowed.

In default, the factory inspector may call in the inspector of nuisances or medical officer of health. (ss. 3 & 4.)

Unless printing offices, binderies, and paper mills shall be specially exempted by the Secretary of State, they must be lime-washed every 14 months, or if painted within every seven years, such paint must be washed every 14 months. (s. 33.)

Safety.—All hoists and all fly-wheels directly connected with the motive power must be properly fenced; so must all “mill gearing,” unless it be in such a position or of such construction as to be equally safe as if it were fenced.

If the factory inspector shall think any other machinery or driving bands ought to be fenced, he may require it to be done. The master of the factory may, if he likes, give such inspector notice that he requires the question of fencing to be settled by arbitration, and thereupon it shall be so settled. (ss. 5 & 6.)

⁹⁸ This abstract costs 3d., and may be obtained of Knight and Co., 90, Fleet Street, and others.

A child may not clean machinery while it is driven by power; neither may a young person or woman clean the "mill gearing" while it is in motion. Men only are allowed to work between the fixed and traversing part of any self-acting machine driven by power. (s. 9.)

Accidents.—Where any accident occurs which (a) causes death, or (b) causes bodily injury, and is produced by machinery or through a vat, pan, &c., filled with hot liquid or molten metal or other substance, or by explosion by escape of gas, steam, or metal, and is of such a nature as to prevent the person injured returning to work for 48 hours, written notice must be sent at once to the certifying surgeon for the district, and to the factory inspector, stating the residence of the person injured or the place to which he has been removed. Penalty, £5.

The surgeon must have afforded to him full opportunities for investigating. (ss. 31 & 32.)

The foregoing provisions of the Act apply to all factories; the provisions following apply to those only where women or young persons or children are employed.

Employment of Children and Young Persons.

Masters employing children or young persons in factories must keep the registers prescribed by the Act.⁹⁹ Penalty, £2. (s. 77.)

No child or young person under the age of 16 is to be employed for more than 7 or (if the certifying surgeon lives more than 3 miles from the factory) 13 work days, unless the master of the factory has a certificate of the fitness of such child or young person for work in that factory.

The certificate is to be obtained from the certifying surgeon, who must first examine the person named in it, and also be provided with evidence of age. (s. 27.)

If the inspector shall think a certain child or young person under 16 years of age is unfit for the work he has to do, he

⁹⁹ These registers are procurable at the same publishers as the abstracts.

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may require the master to get the surgeon to examine and certify. (s. 29.)

When a child becomes a young person, a fresh certificate is necessary.

The *Surgeon's fees* for examination are as follows :—

When the examination is at a factory not exceeding one mile from the surgeon's residence, 2s. 6d. for each visit and 6d. for each person after the first five examined at that visit.

Where the factory is more than a mile distant then, in addition, 6d. for every complete half-mile over and above the mile.

When the examination is at the surgeon's residence or at some place appointed by him, 6d. for each person examined. (s. 74.)

Children can only be employed on alternate days or in morning and afternoon sets. Those forming the morning set one week must form the afternoon set the following week, and *vice versa*. On Saturdays, too, they must not work in the same set as on the other days of the week. (s. 14.)

No child under 10 years of age may be employed at all in a factory or workshop. (s. 20.) The object of this mode of employment is that the child may attend school. A child who has not in any week attended school for all the attendances required by Section 23 is not to be employed in the following week till he has made up the deficiency.

Hours of Employment.

Subject to certain exceptions hereafter appearing, no woman, young person, or child may be employed except between the hours of 6 a.m. and 6 p.m., or 7 a.m. and 7 p.m. (Saturdays, 6 or 7 a.m. and 2 p.m.)

Printers, lithographers, bookbinders, machine rulers, and envelope, playing card, almanack, valentine, and fancy box makers may make the hours 8 a.m. to 8 p.m. (Saturdays, 8 a.m. to 4 p.m., or 7 a.m. to 3 p.m.), if they specify them in the notice appended to the official abstract of the Act. (s. 42.)

When occasion requires, the Secretary of State may make the hours 9 a.m. to 9 p.m. (except on Saturdays), but he may make his licence subject to certain conditions if he thinks fit. (ss. 43 & 63.)

When a young person or woman has not worked more than eight hours on any day of the same week, he or she may be employed during the same hours on the Saturday as on the other days. Notice, however, must be given to the inspector and affixed in the factory. (s. 18.)

Meals.—On every day except Saturday, not less than an hour and a half, or, in the case of children, 2 hours, must be allowed for meals, of which time one hour at least must be before 3 p.m. It may be given all at once or at different times.

On Saturdays not less than half an hour.

No child, young person, or woman may be employed for more than 5 hours continuously, without an interval of at least half an hour for a meal. (ss. 13 & 14.)

Meals must be taken at regular hours, and during meal-times no work must be done, nor may the hands remain in the work-rooms (s. 17), but these provisions do not apply in the case of letterpress printing works, or paper mills (Schedule III., part 2.)

Holidays.—No child, young person, or woman may be employed on Sundays (s. 21), or on Christmas Day, or on Good Friday, unless an Easter holiday is substituted for it. (s. 22.)

In addition, eight half-holidays must be allowed during the year, at least four of which must be between the 15th March and the 15th October.

A whole holiday counts as two half-holidays.

Cessation of work does not count as holiday-time unless notice of a half-holiday or holiday has been stuck up in the factory during the whole of the last previous work-day but one. (s. 22.)

Overtime.—In order to cope with a press of work at certain

seasons of the year, young persons and women may be employed on 48 days in any twelve months for two hours after the regular closing-time (*i.e.*, till 8 p.m., where the hours are from 6 to 6; till 9 p.m., where they are from 7 to 7; and till 10 p.m., where they are from 8 to 8), in works where these operations are carried on, viz., letterpress printing, lithography, bookbinding, machine ruling, almanack making, valentine making, envelope making, playing card making, fancy box making.

But such employment must not be for more than 5 days in any one week, nor for more than 48 days in the whole in any twelve months; and the meal-time must be increased to at least two hours, of which half an hour is to be after 5 p.m. (s. 53 and Schedule III., part 3, as explained by s. 13 of the Act of 1883.)

In paper mills where male young persons are not employed during any part of the night, children, young persons, and women may be kept half an hour after the regular limit if their work is in an incomplete state. But any time thus worked must be taken into account, so that the total working hours in the week are not raised above the number otherwise allowed, and women may not work overtime on more than 96 days in the whole in any twelve months. (s. 54 and Schedule III., part 4, as explained by s. 13 of the Act of 1883.)

Night-work.—In letterpress printing works and paper mills and such other works as may be specially licensed by the Secretary of State, male young persons may be employed at night, subject to the following conditions: (*a*) They must not work more than 12 consecutive hours beginning and ending at times fixed by the notice; (*b*) they are to have similar periods for meals as the day hands; (*c*) they must not be employed during any part of the twelve hours preceding or succeeding the period of night employment. (s. 58 and Schedule III., part 6.)

Where the process of printing newspapers is carried on on

not more than two nights in the week, male young persons of 16 and upwards may be employed at night as if they were men, but not for more than two nights a week. (s. 59.)

The Education Acts.

The Education Acts, 1870 to 1880, contain provisions relating to the employment of children, which are supplementary to those in the Factory Act, and which should be known to the reader, although it is happily not usual to employ young children in or about printing-offices.

Subject to what is written below, a child under ten years of age may not be employed at all, except in agricultural pursuits, and then only under close restrictions.¹

A child of the age of ten years or upwards may not be employed, unless he has received a certificate of sufficient instruction in reading, writing, and arithmetic; or, if resident in a School District, a certificate of having reached the standard of education fixed by a bye-law in force in the district for the total or partial exemption of children of like age from the obligation to attend school.²

The penalty of disobedience to either of these enactments is a fine not exceeding forty shillings. It is enforceable at the instance of the local School Board, or School Committee.

Parents can no more employ their own children in contravention of the Act than they can other people's. Employment of a child "in any labour exercised by way of trade, or for the purposes of gain," is "employment" within the Act.³

An agent or workman taking a child into employment, in contravention of the Act, is liable to a penalty as if he were the employer.⁴

It is a sufficient answer to a charge under the Act, to show (1) that there is no elementary school which the

¹ 39 and 40 Vict., c. 79, ss. 5 and 9.

² Same stat., sec. 5, and 43 and 44 Vict., c. 23, s. 4.

³ 39 and 40 Vict., c. 79, s. 47. ⁴ Section 39.

child can attend within two miles from its residence ; or (2) that the employment is only during holiday-time, and that the child attends an efficient school regularly during full time.⁵

Moreover, where an employer charged with taking a child into his employment, in contravention of the Act, proves that he has used due diligence to enforce the observance of the Act, and either that some agent or workman of his employed the child without his knowledge or consent, or that the child was employed either on the production of a forged or false certificate, and under the belief in good faith in the genuineness and truth of such certificate, or on the representation by his parent that the child was of an age at which his employment would not be in contravention of the Act, and under the belief in good faith in such representation, the employer is to be exempt from any penalty under the Act.⁶

And where the employer satisfies the local authority, inspector, or other person about to institute a prosecution that he is exempt under this section by reason of some agent, workman, or parent being guilty, and gives all facilities in his power for proceeding against and convicting such guilty party, no proceedings under the Act are to be taken against the employer.⁷

*The Boiler Explosion Act, 1882.*⁸

Whenever the misfortune of a boiler explosion happens in a printing-office or other factory, notice must, within twenty-four hours, be sent to the Board of Trade by the owner or user of the boiler, or by some one acting on his behalf, and such notice must state :—

1. The name and precise locality of the works where the explosion took place.
2. The day and hour when it took place.
3. The number of persons killed.

39 and 40 Vict., c. 79, s. 9.

Section 39. ⁷ *Ibid.*

⁸ 45 and 46 Vict., c. 22.

4. The number of persons injured.
5. A general description of the boiler.
6. The purposes for which the boiler was used.
7. The part of the boiler which failed, and the extent of the failure generally.
8. The pressure at which the boiler was worked.
9. The name and address of any society or association by whom the boiler was last inspected or insured.

This notice must be dated and signed by some person responsible for the particulars contained in it.

By notice in the *Gazette*, the Board of Trade may from time to time require additional particulars.

Failure to give the required notice entails a fine not exceeding £20, to be inflicted in a magistrate's court.

The Board of Trade has power to send down a commissioner or commissioners to inquire into the circumstances attending the explosion ; and the commissioners have power to make inspection, summon witnesses, order production of books and papers, and award expenses ; and they may order the costs of the inquiry to be paid by the party summoned before them, or by the Board of Trade.

Smoke and other Nuisances.

In the Metropolis and all towns to which the Towns Improvement Clauses Act, 1847, applies, all furnaces or fireplaces used for manufacturing purposes or for steam engines must be so constructed as to consume their own smoke, and the use of any furnace not so constructed, or in such manner as to consume the smoke, is prohibited under penalties. In the Metropolis the penalty is a sum not exceeding £5, nor less than 40s., for the first offence, £10 for the second offence, and for each subsequent conviction a sum double the amount of the penalty imposed for the last preceding conviction ; and these penalties may be inflicted on the owner or occupier of the premises, or the foreman or other person employed by such owner or occupier. Moreover, the police have power to enter and

inspect premises to see that the Act is complied with.⁹ In provincial towns the penalty is 40s. for every day during any part of which such furnace or fireplace shall be used in contravention of the Act after one month's notice in writing shall have been given to the owner or occupier by the commissioners of the town to remedy or discontinue the use of the same.¹⁰

By the Sanitary Act, 1866, a furnace or fireplace not smoke-consuming is constituted a nuisance, and so is every chimney (not being the chimney of a private dwelling-house) sending forth black smoke in such quantity as to be a nuisance, provided that when a person is summoned before the justices in respect of a nuisance arising from a fireplace or furnace which does not consume its smoke, the justices may hold that no nuisance is created within the meaning of the Act and dismiss the complaint, if they are satisfied that such fireplace or furnace is constructed in such manner as to consume as far as practicable, having regard to the nature of the manufacture or trade, all smoke arising therefrom, and that such fireplace or furnace has been carefully attended to by the person having charge thereof.¹¹ The Act contains provisions for inspection and abating, and for structural alterations.

The same Act also constitutes a nuisance any factory, workshop, or work-place not kept in a cleanly state, or not ventilated in such a manner as to render harmless, as far as practicable, any gases, vapours, dust, or other impurities generated in the course of the work carried on therein that are a nuisance, or injurious, or dangerous to health, or so overcrowded while work is carried on as to be dangerous or prejudicial to those employed therein.¹²

The inspector of nuisances or other nuisance authority

⁹ 16 and 17 Vict., c. 128, ss. 1 and 4.

¹⁰ 10 and 11 Vict., c. 51, s. 108.

¹¹ 29 and 30 Vict., c. 90, s. 19.

¹² Sect. 19, sub. s. 1.

for the district is charged with the enforcement of the Act.¹³

There are similar provisions in the Public Health Act, 1875,¹⁴ and in Acts concerning Scotland¹⁵ and Ireland.¹⁶

The same Acts empower the sanitary authorities to require proper privy accommodation in factories.¹⁷

No person may use or employ in any manufactory or other place any steam whistle or steam trumpet for the purpose of summoning or dismissing workmen or persons employed, without the sanction of the sanitary authority; penalty, a fine not exceeding £5, and a further fine not exceeding 40s. for every day during which the offence continues. The sanction may be revoked by the sanitary authority, or by the Local Government Board.¹⁸

In London and many other large towns, by police regulations made pursuant to Acts of Parliament, it is an offence to keep a cart or other vehicle standing in the street an unreasonable length of time, or otherwise to obstruct the traffic, whether in the road or on the footway.

¹³ Sect. 20.

¹⁴ 38 and 39 Vict., c. 55, s. 91.

¹⁵ 30 and 31 Vict., c. 101, s. 16.

¹⁶ 41 and 42 Vict., c. 52, s. 107.

¹⁷ 38 and 39 Vict., c. 55, s. 38; 30 and 31 Vict., c. 101, s. 41; 41 and 42 Vict., c. 52, s. 48.

¹⁸ 35 and 36 Vict., c. 61.

CHAPTER X.

TRADE UNIONS.

1. *The Law of Former Times.*

IN the face of history it is idle to contend that until quite recent times the social and political condition of the working man was not unsatisfactory. He appears to have been looked upon by the powerful in the twofold light of an instrument created specially for their advantage and as a burden with which they were unfortunately charged. In the early Saxon times men held their lands in independence, for the benefit of themselves and their families; but on the introduction of the Feudal system there was a great change. The smaller landowners, or "ceorls," became "villeins," bound both to the soil and its lord, but preserving their right to occupy their land, free as against all men but their lord, and represented in the hundred and shire moots. Below them in the social scale were the "landless men," who had no political rights, and who were forced to attach themselves to some lord on pain of outlawry. These men served as household servants or hired labourers, and occasionally, though not often, as rent-paying tenants of land not their own. Their services were, as a rule, rendered in return for lodging and the means of subsistence, and for protection of a vague kind to which they were entitled at the hands of their lord.¹⁹ In the course of time it was found more convenient that the return for services rendered should be made in money, and, accordingly, in the fourteenth century we find that wages were paid. But these wages were apparently fixed at the absolute discretion of the lords or employers, and for centuries the right of the workmen to combine to demand more than what was customarily paid was denied to them, and even the working of the natural laws of political economy was sought to be frustrated by legislation.

¹⁹ See Green's *History of the English People*, vol. i., page 225, and elsewhere.

This was especially so in the reign of Edward III., when the country was visited with the black plague, an awful disease, which swept away considerably more than half the population of the country, then between three and four millions. The natural result of this was a great scarcity of labour, and a demand by the labourers for higher wages, which the employers—the farmers and the wealthier craftsmen—were unable to meet. To remedy this state of things was passed, in 1349, the famous Statute of Labourers, which enacted that “every man or woman of whatsoever condition, free or bond, able in body, and within the age of threescore years, . . . and not having of his own whereof he may live, nor land of his own about the tillage of which he may occupy himself, and not serving any other, shall be bound to serve the employer who shall require him to do so, and shall take only the wages which were accustomed to be taken in the neighbourhood where he is bound to serve,” two years before the plague began, and refusal to obey was punished by imprisonment. The next year Parliament fixed the rates of wages, and forbade labourers to quit their parishes in search of better-paid employment under pain of imprisonment. It was the attempt to enforce these laws, coupled with the deep distress of the people, the preaching of John Ball, and the dissemination of Wicliffe’s tracts, which led to the revolt of the peasantry in which Wat Tyler figured.

The Statute of Labourers was from time to time confirmed by Parliament, and in 1360 a statute²⁰ forbade all combinations by masons and carpenters, “so that every mason and carpenter, of what condition soever he be, shall be compelled by his master to whom he serveth to do every work that to him pertaineth to do;” and by c. 11 of the same year it was provided “that if a labourer do flee to a city or borough, the chief officer, upon request, shall deliver him up, under penalty of £10 to the king, and £5 to the party.” By the 3 Henry VI., c. 1 (1425), it

²⁰ 34 Edward III., c. 9.

was recited that masons held annual congregations and confederacies in general chapters, whereby the "good course and effect of the Statute of Labourers are publicly violated and broken, to the grievous damage of all the communalty," and such chapters and congregations were forbidden on pain of imprisonment as felons; and by the 2 & 3 Edward VI., c. 15 (1548), it was provided that "if any artificers, workmen, or labourers do conspire, covenant, or promise together, or make any oaths that they shall not make or do these works but at a certain price or rate, or shall not enterprise or take upon them to finish that another hath begun, or shall do but a certain work in a day, or shall not work but at certain hours and times," they should suffer fine and imprisonment, and for second offences, pillory also. This Act was not repealed till the reign of George IV.; but, on the other hand, many other statutes of the same tenor were from time to time passed,²¹ the last of them being the 39 & 40 Geo. III., c. 106 (1800), a long statute relating to workmen, whereby all agreements between workmen for obtaining higher wages, or shorter hours, or a diminution of work, were declared illegal, and combination and meetings for the like ends were made punishable, as also was the contribution towards the support of any who offended against the Act.

In 1824 was passed the 5 Geo. IV., c. 95, which repealed all Acts relative to the combinations of workmen or of masters as to wages, time of working, quantity of work, &c., and provided (sect. 2) "that journeymen workmen or other persons who shall enter into any combination to obtain an advance, or to fix the rate of wages, or to lessen or alter the hours of work, or to induce another to depart from his service before the end of the term or terms for which he is hired, or to quit or return to his work before the same shall be finished, or, not being hired, to refuse to enter into work or employment, or to regulate the mode of carrying on any manufacture, trade, or business, or the

²¹ They are specified in the preamble to 5 Geo. IV., c. 95.

management thereof, shall not therefor be subject or liable to any indictment or prosecution for conspiracy, or to any other criminal information or punishment whatever, under the common or statute law."²² But by subsequent sections the use of threats, violence, or intimidation, or combinations to bring about such were still made punishable. This Act was repealed the next year, by 6 Geo. IV., c. 129, when new provisions were made against endeavours to obtain the objects before mentioned by violence to the person or property, or by threats or intimidation, or by molesting or in any way obstructing others. Meetings for the purpose of discussing and agreeing upon wages or prices and duration of work were expressly permitted. This statute remained in force till 1871, being amended in 1859 by the 22 Vict., c. 34, which declared that no workman should by reason merely of entering into an agreement with others for the purpose of fixing wages, or by reason merely of his endeavouring peaceably and in a reasonable manner to persuade others to cease or abstain from working in order to obtain the rate of wages or the altered hours of labour so fixed or agreed upon, be deemed guilty of molestation or obstruction.

There were several decisions of the Courts on these Acts, and the opinions of the judges were sometimes in conflict. Baron Rolfe, afterwards Lord Cranworth, held that strikes were not of themselves illegal, and said, "It is lawful for a dozen to agree together and say, 'We will not work unless A. B. raise our wages.'"²³ Mr. Justice Erle, Mr. Justice Lush, and Mr. Justice Hannen held similar opinions in later cases,²⁴ but Mr. Justice Crompton declared them illegal at common law.²⁵ What amounted to a threat or molestation often came up for decision. In *Ree v.*

²² Sect. 3 gave the like liberty to masters.

²³ *Reg. v. Selby* (1847), 5 Cox's Crown Cases, 495.

²⁴ See *Farrer v. Close* (1869). L. R. 4 Q. B. 602; 38 L. J. M. C. 132. *Reg. v. Rowlands* (1851), 17 Q. B. 671.

²⁵ In *Hilton v. Eckersten* (1856), 6 E. & B. 47, and *Walsby v. Anley* (1861), 3 E. & E. 516; 30 L. J. M. C. 134.

Bykerdyke ²⁶ (1832) men were held rightly convicted, who, in combination, sent a letter to an employer, informing him that all his men would strike unless seven named were discharged. In *Walsby v. Anley* (1869) ²⁷ it was held that the threat must be to do something illegal, and that it was illegal for a workman, in conjunction with others, to go and tell his employer that they would all cease working immediately unless he discharged certain others. So, too, in *O'Neil v. Longman* (1863) ²⁸ it was held a threat where the chairman at a meeting of a benefit club asked a member whether he would leave a certain workshop, or stay and be despised by the club, have his name sent round the country in the report, and be put to all sorts of unpleasantness. And so it was in *Shelbourne v. Oliver* (1866), ²⁹ where workmen went in a body and told the employer that unless he discharged X. Y. his men should not be allowed to work; and in *Skinner v. Kitch* (1867), ³⁰ where the secretary of a branch of the Carpenters' Union served on a master builder a letter stating that he had been requested by the committee to give the men in that builder's employ notice to come out on strike unless one Jordan, employed by him, became a member of the union, it was held that the accused was rightly convicted.

In 1871, after a Royal Commission had reported on the subject, two Acts were passed upon the subject of Trades Unions: the Trade Union Act and the Criminal Law Amendment Act. ³¹ The former, as amended by a later statute, is still in force; the latter was repealed in 1875. Under it, however, were tried two notable cases: *Reg. v. Burn* (the Gas Stokers' Case, 1872), ³² and *Reg. v. Halliday* (1874).

²⁶ 1 M. & R. 179.

²⁷ *Ubi supra*.

²⁸ 4 B. & S. 376.

²⁹ 13 L. T. N. S. 630.

L. R. 2 Q. B. 393.

³¹ 34 and 35 Vict., chaps. 31 and 32.

12 Cox's Crim. Cas. 316.

In the former Mr. Justice Brett (now Lord Esher, Master of the Rolls), in summing up, said, "If there was an agreement among the defendants by improper molestation to control the will of the employers, then I tell you that that would be an illegal conspiracy at Common Law, and that such an offence is not abrogated by the Act. . . . If you think that the molestation which was agreed upon was such as would be likely, in the minds of men of ordinary nerve, to deter them from carrying on their business according to their own will, then I say that is an illegal conspiracy"; and in the other case Baron Amplett expressed himself to the like effect.

2. *The Present Law.*

The law at present in force concerning Trade Unions and combinations of workmen is the Common Law as affected by the Trade Union Acts, 1871 and 1876,³³ and the Conspiracy and Protection of Property Act, 1875.³⁴

By the Common Law all combinations of two or more persons who agree to do unlawful acts, or acts injurious to the public weal, or to do lawful acts in an unlawful way, are punishable.³⁵

By the Trade Union Act, it is enacted³⁶ that "the purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise."

And by sec. 3 "the purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render void or voidable any agreement." But sec. 4 goes on to enact that "Nothing in

³³ 34 and 35 Vict., c. 31, and 39 and 40 Vict., c. 22.

³⁴ 38 and 39 Vict., c. 86.

³⁵ See Wright on "Conspiracies," and Stephen's "Digest of the Criminal Law" (p. 95). As to "boycotting," see *Reg. v. Parnell*, the *Times*, Jan. 25, 26, 1881, and *Mogul Steamship Co. v. McGregor* (1885), 15 Q. B. D. 476.

³⁶ Sec. 2.

this Act shall enable any court to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for the breach of any of the following agreements, namely, (1) Any agreement between members of a trade union as such, concerning the conditions on which any members for the time being of such trade union shall or shall not sell their goods, transact business, employ, or be employed ; (2) Any agreement for the payment by any person of any subscription or penalty to a trade union ; (3) Any agreement for the application of the funds of a trade union, (a) To provide benefits to members, or (b) To furnish contributions to any employer or workman not a member of such trade union, in consideration of such employer or workman acting in conformity with the rules or resolutions of such trade union, or (c) To discharge any fine imposed upon any person by sentence of a court of justice ; or (4) Any agreement made between one trade union and another ; or (5) Any bond to secure the performance of any of the above-mentioned agreements. But nothing in this section shall be deemed to constitute any of the above-mentioned agreements unlawful." The effect of this section is that agreements of the kinds mentioned, though not unlawful, cannot be enforced.

By sec. 5 it is provided that the Friendly Societies Acts, the Industrial and Provident Societies Acts, and the Companies Acts shall not apply to trade unions, and that the registration under any of these Acts of any trade union shall be void ;²⁷ and then follow provisions enabling trade unions to be registered as such with the Registrar of Friendly Societies, giving power to the trustees of registered trade unions to hold property, and to such trustees, or any other officer of the trade union who may be authorised so to do by the rules thereof, to sue or be sued in behalf of the union in actions or other legal proceedings, and regulating their internal management.

²⁷ By 39 and 40 Vict., c. 22, however, sec. 28 of the Friendly Societies Act, 1875, is made applicable to all trade unions which insure or pay money on the death of a child under ten years of age.

The Trade Union Act of 1876 relates exclusively to the internal affairs of such unions, and defines a trade union as "any combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, whether such combination would or would not, if the principal Act [that of 1871] had not been passed, have been deemed to have been [*sic*] an unlawful combination by reason of some one or more of its purposes being in restraint of trade."

The Conspiracy and Protection of Property Act,³⁸ section 3, provides as follows: "An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute between employers and workmen shall not be indictable as a conspiracy if such act, committed by one person, would not be punishable as a crime.

"Nothing in this section shall exempt from punishment any persons guilty of a conspiracy for which a punishment is awarded by any Act of Parliament.

"Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace, or sedition, or any offence against the State or the Sovereign.

"A crime for the purposes of this section means an offence punishable on indictment, or an offence which is punishable on summary conviction, and for the commission of which the offender is liable under the statute making the offence punishable to be imprisoned either absolutely or at the discretion of the court as an alternative for some other punishment.

"Where a person is convicted of any such agreement or combination as aforesaid to do or procure to be done an act which is punishable only on summary conviction, and is sentenced to imprisonment, the imprisonment shall not exceed three months, or such longer time, if any, as may

³⁸ (1875) 38 and 39 Vict., c. 86.

have been prescribed by the statute for the punishment of the said Act when committed by one person."

Section 5 provides as follows: "Where any person wilfully and maliciously breaks a contract of service or of hiring, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to endanger human life, or cause serious bodily injury, or to expose valuable property, whether real or personal, to destruction or serious injury, he shall, on conviction thereof by a court of summary jurisdiction, or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour."

Section 7 relates to picketing, molesting, and intimidation, and is in these words: "Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority:—

"(1) Uses violence to or intimidates such other person or his wife or children, or injures his property; or,

"(2) Persistently follows such other person about from place to place; or,

"(3) Hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof; or,

"(4) Watches or besets the house or other place where such other person resides, or works, or carries on business, or happens to be, or the approach to such house or place; or,

"(5) Follows such other person with two or more other persons in a disorderly manner in or through any street or road, shall, on conviction thereof by a court of summary jurisdiction, or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour.

“Attending at or near the house or place where a person resides, or works, or carries on business, or happens to be, or the approach to such house or place, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section.”

It will be observed that offences under the above sections may be disposed of by the magistrates summarily, or they may be sent for trial upon indictment. The accused may demand a trial ; or if the case is dealt with summarily, and it is desired to appeal to the court of quarter sessions from the magistrate's decision, this may be done on giving the proper notices.

Accused persons and their wives or husbands are, notwithstanding the general rule to the contrary, permitted to give evidence in cases under sections 5 and 6 of this Act.³⁹

Prosecutions for conspiracy in any case of trade combination are now unheard of. The Act on this point simply declares what was conceived by most judges to be the law before ; namely, that if one person can do an act without committing an offence, it is no offence for several to combine to do that act.

Section 5 deserves to be carefully considered by men who contemplate quitting their employment, in violation of their duty under their contract of service. They are under any circumstances liable to pay damages for their breach of contract ; but they may, under the circumstances stated in this section, be liable also to fine or imprisonment.

It is section 7 which limits the operations of workmen in trade disputes. A certain amount of coercion is permissible, but the consequences are serious if the limit is transgressed. There must be no violence, intimidation, or persistent annoyance, or the law will be infringed. “Picketing, that is, watching and speaking to the workmen as they come and go from their employment, to induce them to leave their

³⁹ Sec. 10. Also in cases under section 4, which, however, do not affect printers.

service, is not necessarily unlawful ; nor is it unlawful to use terms of persuasion towards them to accomplish that object ; but if the watching and besetting is carried on to such a length and to such an extent that it occasions a dread of loss, it is unlawful.”⁴⁰

In regard to what may and may not be done in times of trade disputes, the statements of Baron Bramwell in *Reg. v. Druitt* (1867)⁴¹ and Baron Huddleston in *Reg. v. Bauld* (1876)⁴² deserve to be carefully considered. Baron Bramwell said : “ The liberty of a man’s mind and will, to say how he should bestow himself and his means, his talents, and his industry, was as much a subject of the law’s protection as was that of his body. . . . If any set of men agreed among themselves to coerce that liberty of mind and thought by compulsion and restraint, they would be guilty of a criminal offence : that was the common law of the land. As to picketing, he was of opinion that, if it could be done in a way which excited no reasonable alarm, or did not coerce or annoy those who were the subjects of it, it would be no offence in law. . . . If pickets made use of abusive language, of threatening gestures, or even if they abstained from them, yet so placed themselves, or so acted, by watching the movements of the workpeople and masters, or by black looks or any other annoyance, as would be likely to have a deterring effect on the minds of ordinary persons, it was ‘molestation.’ ”

Baron Huddleston, in his observations in *Reg. v. Bauld*, said : “ Men have no right to compel any other persons to abstain from doing any act which they have a legal right to do, and for that purpose, to watch or beset the house or other place where such persons reside, work, or carry on business. But they may watch merely to obtain or communicate information. When the men combine, as they

⁴⁰ Per Baron Cleasby in *Reg. v. Hibbert* (1875), 13 Cox’s Criminal Cases, 82.

⁴¹ 10 Cox’s C. C., 592.

⁴² 13 Cox’s C. C., 284.

have a perfect right to do, they may say 'We won't work except for certain wages, we won't work except upon certain terms,' and they have a right to agree together for this purpose; but there may be amongst their number some persons disposed to enter into an arrangement to receive money from the funds raised for the purpose of supporting the strike, and then to go to work and also get wages from the masters at the same time. This would certainly be a hardship of which the men might complain, and therefore the Legislature enacted that if their watching and besetting was only for the purpose of watching their own men who should so act, it should not be a watching and besetting within the meaning of the Act. But this watching and besetting is a very serious offence, unless it is confined to merely obtaining and communicating information, and this cannot be too well known."

CHAPTER XI.

LIBEL.

It is not intended in this chapter to give an elaborate treatise on the law of Libel, for that would occupy more space than can be afforded; moreover, the existence of such excellent books as Odgers on Libel and Slander, and Folkard's Starkie on the same subject, renders it unnecessary. It is, however, proposed to give such a statement of the law as will be in general sufficient for all the needs of the printer or newspaper publisher.

1. *What is a Libel.*

A libel may be defined generally to be defamatory matter published otherwise than by speaking.

Libel is both a civil wrong and a criminal offence: it may be redressed by an action for damages,⁴³ or punished on prosecution under the criminal law.

A libel which may be punished is not in all respects the same as a libel which may be the subject of an action. Some acts constitute punishable libels which will not support an action, and on the other hand some acts, followed by certain consequences, constitute actionable libels, but cannot be punished under the criminal law.

A libel, punishable under the criminal law, is defined by the Draft Criminal Code⁴⁴ as "matter published without legal justification or excuse, designed to insult the person to whom it is published, or calculated to injure the reputation of any person, by exposing him to hatred, contempt, or ridicule. Such matter may be expressed either in words legibly marked upon any substance whatever, or by any object signifying such matter otherwise than by words,

⁴³ An action for libel cannot be brought in the County Court.

⁴⁴ That settled by Lord Blackburn and other judges in 1879.

and may be expressed either directly or by insinuation or irony."

A libel in respect of which an action may be brought has been defined as "a written⁴⁵ statement, published without lawful justification or excuse, calculated to convey to those to whom it is published an imputation on the plaintiffs injurious to them in their trade, or holding them up to hatred, contempt, or ridicule."⁴⁶

The reason why a distinction is made between actionable and punishable libels is that libels are actionable only when they either do cause, or are in their nature calculated to cause, injury to the party libelled, while they are criminally punishable because they tend to a breach of the peace. Hence sending defamatory matter to the person defamed is not actionable, because that cannot injure him; but it is punishable because it is likely to lead to a breach of the peace.

Defamatory matter which is only spoken is not "libel," but "slander." Many things may be said orally with impunity, which, if reduced into writing, would be libellous; the reason being that a man often says things hastily and without meaning quite what he says, but he cannot commit a thought to paper, and still less to print, without more or less deliberation.

A libel, though generally conveyed by words, may be conveyed also by pictures, sign, and effigies.

The word "publish" used in the above definitions requires explanation; accordingly in the Draft Code the meaning of "publishing a libel" is declared to be "exhibiting it in public, or causing it to be read or seen; or showing or delivering it, or causing it to be shown or

⁴⁵ Writing includes printing and any other method of expressing an recording ideas.

⁴⁶ Per Lord Blackburn in *Capital and Counties Bank v. Henty* (1882), 7 App. Cas. 741; 52 L. J. Q. B. 232.

delivered, with a view to its being read or seen by *either the person defamed or any other person.*"

53 This is correct, so far as the criminal law is concerned ; but for the purposes of the civil law, or actions, the words italicised must be changed to "some person other than the person defamed."

"Person" as used in the first definition is not confined to a single human individual. It will include several, and even a collection of individuals. Thus it was held a libel where a certain nunnery was vilified, although no individual was specially referred to,⁴⁷ and also where the persons defamed were described simply as "certain Jews lately arrived from Portugal, and living near Broad Street," no one being particularised.⁴⁸ A company or corporation may be libelled, and may bring an action for the libel.⁴⁹

So, too, it is an offence punishable by the common law to defame a dead person, if it be alleged and proved that it was done with intent to bring contempt and scandal on his living family and relations.⁵⁰ But it is not actionable.

Words written and published, which of themselves are defamatory, or have a defamatory meaning, are actionable without showing that special damage has resulted from them.

"Special damage" may be defined to be "the loss of some material temporal advantage, arising from an injury directly and legitimately as a fair and natural although not necessary result."⁵¹

Words which are not defamatory in themselves, but are

⁴⁷ *Rex v. Gathercole* (1838), 2 Lewin's Crown Cases, 257.

53 ⁴⁸ *Rex v. Osborne* (1732), W. Kelynge, 230.

⁴⁹ *Metropolitan Omnibus Co. v. Hawkins* (1859), 28 L. J. Ex. 201, 4 H. and N. 87.

⁵⁰ *Rex v. Topham* (1791), 4 Term Rep. 126. See *Rex v. Ensor* (1887), 3 "Times" Law Rep. 366.

⁵¹ Compare Mayne on Damages, 4th Edition, p. 523, with Townshend on Slander and Libel (New York, 1877), p. 316.

in the circumstances in which they are published likely to be understood in a libellous sense, are actionable if special damage has resulted therefrom and is alleged as the ground of the action.

For the purpose of determining whether the matter in question is a libel or not, the intention of the publisher of it is not to be considered. A man may libel another unwillingly, and even unwittingly, and will be held responsible nevertheless. Thus, where a newspaper proprietor, by a compositor's mistake, inserted the name of a certain firm under the head "Bankrupts" instead of under "Dissolutions of Partnership," this was held a libel, and the defendant had to pay damages.⁵²

Whether the matter in question in any case amounts to a libel is for the jury to determine upon the evidence; it is for the judge to see that none but proper evidence is laid before them, to sum up and give his opinion thereon, to define a libel and point out when it is actionable or punishable, as the case may be, and when not, and to instruct them as to the awarding of damages.⁵³ It is for him, also, to determine whether the matter charged as a libel can, in the circumstances in which it is published, be libellous; if he thinks it cannot, he is to non-suit the plaintiff, or, in a criminal prosecution, order the defendant to be discharged; if he thinks it *can*, he is to leave it to the jury to say whether in the said circumstances it *is* libellous.⁵⁴

In strictness, a *thing* cannot be libelled, but, as we shall see hereafter, an action will lie for unlawfully decriing or depreciating another man's property which he has for sale, or for unlawfully disputing his title to it. Defamation of the thing, too, may amount to defamation of the persons

⁵² *Shepherd v. Whitaker* (1875), L. R. 10 C. P. 502.

⁵³ Fox's Act, 32 Geo. III., c. 69.

⁵⁴ See per the Lords in *Capital and Counties Bank v. Henty* (1882), 7 App. Cas. 741; 52 L. J. Q. B. 232.

owning or otherwise concerned with it, and in such case they may complain of the libel. Thus, where one newspaper published an attack on another referring to "the advertisements of usurers, which it parades before its readers weekly for a valuable consideration," and asserted that it took "other advertisements cheap to induce respectable advertisers to appear in the usury and quack doctor page," it was held that this amounted to a libel on its proprietors, and they were entitled to bring an action in respect of it.⁵⁵

On the question, What is a Libel? the case of *The Capital and Counties Bank v. Henty*,⁵⁶ which went to the House of Lords, is very instructive. There Messrs. Henty, brewers, being annoyed at the refusal of one branch of the plaintiffs' bank to cash some cheques on another branch of it, gave notice to their customers that they would not receive cheques on the plaintiffs' bank in payment of their accounts, and these notices caused a run on the bank. The plaintiffs brought an action, alleging the notice to be libellous as imputing insecurity, and a verdict was returned in their favour. The defendants appealed, and judgment ultimately went in their favour.

In giving his opinion, Lord Blackburn gave the definition of an actionable libel quoted above, and then went on to say: "The manner of publication and the things relative to which the words are published, and which the person publishing knew, or ought to have known, would influence those to whom it was published in putting a meaning on the words, are all material in determining whether the writing is calculated to convey a libellous imputation. . . . I think that from the earliest times it has by the law of England been the province of the Court to say whether words published in writing are a libel or not."⁵⁷ . . .

⁵⁵ *Russell v. Webster* (1874), 23 W. R. 59.

⁵⁶ (1882) 7 App. Cas. 741; 52 L. J. Q. B. 232.

Quare whether, having regard to Fox's Act, this is quite so; or

In construing the words to see whether they are a libel the Court is, where nothing is alleged to give them an extended sense, to put that meaning on them which the words would be understood by ordinary persons to bear, and say whether the words so understood are *calculated* to convey an injurious imputation; the question is not whether the defendant *intended* to convey that imputation"—for if the words are calculated to injure, the best intentions will not absolve the defendant. Lord Blackburn then went on to consider the class of cases where the words were not such as in their ordinary sense would be libellous, but where the plaintiff asserted that they had a hidden meaning—an *innuendo*. In such a case the learned lord declared that the defendant could not be held responsible unless *both* the Court and the jury were of opinion that the writing was libellous. "If the defendant can get either the Court or the jury to be in his favour he succeeds. The prosecutor or plaintiff cannot succeed unless he gets both the Court and the jury to decide for him."

Then what is to guide the Court in forming an opinion as to the libellous tendency of a writing not appearing to be such upon the face of it? Lord Selborne said: "In deciding on the question whether the words are capable of the meaning ascribed to them, the judge ought not, in my opinion, to take into account any mere conjectures which a person reading the document might possibly form as to some one of various motives or reasons which might have actuated the writer, unless there is something in the document itself, or in other facts properly in evidence, which to a reasonable mind would suggest, as implied in the publication, these particular motives or reasons." Did the bald statement that the defendants would not take cheques drawn on the plaintiffs' bank necessarily impute insolvency? To his

whether the respective functions of the judge and jury are not as stated on page 133.

mind it meant no more than it said, namely, that the defendants declined to take such cheques; they were not obliged to accept them, and they might have various motives or reasons for not doing so; they were under no obligation to give any reason, nor did they give any, and in his opinion it would be arbitrary, and not reasonable, to imply from the mere words of the circular an imputation upon the plaintiffs' credit or solvency. "The test, according to the authorities, is whether, under the circumstances in which the writing was published, reasonable men, to whom the publication was made, would be likely to understand it in a libellous sense." And again, Lord Blackburn said he agreed with Lord Justice Brett that "it is unreasonable that when there are a number of good interpretations the only bad one should be seized upon to give a defamatory sense to the document." Lord Bramwell also expressed his opinion to the same effect.

In the principles laid down in this important case is to be found the solution of the question whether *all* written language causing special damage is actionable, or only such as is defamatory in itself. This was a moot point. In Comyn's Digest,⁵⁸ an old law book, it is laid down that "*any* words by which the party has a special damage" are actionable, while in *Kelly v. Partington*⁵⁹ the Court of King's Bench held that to be actionable the words must in their nature be defamatory, a decision which was supported in Ireland in 1875.⁶⁰ It would seem, as already stated,⁶¹ that for the plaintiff to succeed the words need not be defamatory in themselves in their ordinary meaning, if from the circumstances in which they were published they would be likely to be understood in a libellous sense.

⁵⁸ Action on the case for Defamation, D. 30.

⁵⁹ (1833) 5 B. & Ad. 645.

⁶⁰ *Sheahan v. Ahern*, 9 Irish Rep. C. L. 45.

⁶¹ See page 133.

2. *What Libels are Actionable or Punishable.*

In order that a libel may be the subject of an action or a criminal prosecution, it must have been published "maliciously."⁵²

Every libel is deemed to have been published maliciously which does not fall under one or other of the following heads, viz., 1. Justification, and 2. Privilege.

1. The publishing of defamatory matter is not a civil wrong (*i.e.*, is not actionable) if such matter is true.

But its publisher is still liable to be punished criminally unless he pleads and can show, not only that it is true, but that the publishing of it in the manner in which it was published was for the public benefit at the time when it was published.⁵³

⁵² The averment in an action is that the defendant "falsely and maliciously published of and concerning the plaintiff" the words; the averment in an indictment is that the defendant "falsely and maliciously published of A. B. a false, malicious, and defamatory libel." "Malice," said Mr. Justice Bayley, in *Bromage v. Prosser* (1825), 4 B. & C. 255, "in common acceptation means ill-will against a person, but in its legal sense it means a wrongful act done intentionally without just cause or excuse. . . . If I traduce a man, whether I know him or not, and whether I intend to do him an injury or not, the law considers it as done of malice, because it is wrongful and intentional. It equally works an injury whether I meant to produce an injury or not, and if I have no legal excuse for the slander, there shall be a remedy against me for the injury it produces. And the law recognises the distinction between these two descriptions of malice—malice in fact, and malice in law—in actions of slander [and libel]." "Intent" is generally understood as equivalent to "meaning," but in law it is not so, for a man is in law held to intend the natural consequences of his acts or omissions, although he never meant that they should follow. Mr. Justice Bayley in the above passage uses the word in one place in its popular and in another in its legal sense.

⁵³ See Stephen's Digest of the Criminal Law, art. 272. The language of the text is taken from the Draft Criminal Code, that of Mr. Justice Stephen being simply "that it was true, and that it was for the public benefit that such matter should be published," without

A defence setting up the truth of the libel is called a plea of justification. It is dangerous to raise this defence if there is a doubt as to proving it, for justification pleaded and not proved is a ground for the awarding of higher damages than would otherwise be awarded.

The adage, "The greater the truth the greater the libel," arose under a former state of the law ; it is applicable now, if at all, only in those criminal cases where it cannot be shown that the publication of the matter complained of was for the public benefit.

2. The publication of defamatory matter is not a civil wrong or a punishable offence if it is a *privileged* publication.

The publication of defamatory matter *may* be privileged

- (a) When it is made in answer to inquiries or in giving information.
- (b) When it is made in courts of justice.
- (c) When it is made in a parliamentary paper.
- (d) When the defamatory matter is contained in a report of or comment upon proceedings in Parliament or in a public court of justice.
- (e) When the defamatory matter is relevant to a matter of public interest.
- (f) When the defamatory matter is a comment on some subject on which there is a right to comment.
- (g) When the defamatory matter is published to remedy a grievance.
- (h) When the defamatory matter is published on the invitation or challenge of the person defamed.

We will consider each separately.

(a) *Answers to inquiries and information given.*

In order that the publication of defamatory matter may be privileged in these cases it is necessary that the following

any of the limitations suggested by the text. It is thought, however, that the language of the draft code correctly states the law at present existing.

elements should co-exist : (1) the person publishing the defamatory matter must, at the time of publishing it, honestly believe it to be true ; (2) the relation between the parties by and to whom the publication is made must be such that the person publishing is under some legal, moral, or social duty to publish such matter to the person to whom the publication is made, or has a legitimate personal interest in so publishing it ; and (3) the publication must not exceed either in extent or in manner what is reasonably sufficient for the occasion.

For instance, if A., a master printer, in whose employment B. has been, is asked by C., who contemplates engaging B., for the character of the latter, and A. writes that B. is lazy, good for nothing, drunken, and of more than doubtful honesty ; if A. honestly and on reasonable grounds believes that B. is what he states him to be, he is not liable, either in an action or on a prosecution, although the statement is in fact untrue in every particular.

If A. were not asked for B.'s character, but volunteered the statement to C., he would or would not be liable according as (a) there was or was not an honest belief on his part in the truth of the statement (or, as it is often put, there was "express malice" on his part) ; and (b) there was a duty, legal, moral, or social, on A.'s part to disclose to C. his opinion of B.'s character. If C. were not contemplating taking B. into his service, but was only a person who possibly might do so, A. would be liable, because there would be no duty on his part to give the opinion. Still more so would he be liable if C. were a mere stranger.

If I hear from what I think a trustworthy source that A.'s servant is robbing him, and I, *bonâ fide* thinking it my duty to do so, write to A. and tell him what I have heard, or forward the letter in which the information is given to me, and it turns out that my informant was mistaken, am I liable in an action or prosecution for libel ? The question was much discussed in *Coxhead v. Richards*.⁵⁴

⁵⁴ (1846) 2 C. B. 569 ; 15 L. J. C. P. 278.

There the defendant received a letter from the mate of a ship accusing the plaintiff (the captain of the ship) of frequent drunkenness and neglect of duty; the defendant had nothing to do with the matter, but thought it incumbent on him to let the owners know, and accordingly he, in good faith and privately, communicated the letter to them, and in consequence the plaintiff was dismissed. The latter brought an action for libel against the defendant, and Chief Justice Tindal directed the jury that if the defendant acted honestly and in good faith the publication was privileged, and their verdict must be for him, otherwise for the plaintiff. They found for the defendant, and on motion to the Court to set aside the verdict, it was held by the Chief Justice and Mr. Justice Erle that this direction was right, and by Justices Coltman and Cresswell that it was wrong. The difference of opinion between the judges was caused by the different views they took of the duty of the defendant under the circumstances, having regard to the fact that he had nothing to do with either the ship or her owners. The point has not since been before the Courts, and the law, therefore, remains uncertain.⁵⁵

But social relationship—such as consanguinity, affinity, or even friendship—is sufficient to support a plea of privilege. Thus when A.'s mother-in-law was about to marry B., of whom A. entertained a bad opinion, and he wrote her, making serious charges against B., honestly believing what he wrote and acting in good faith, he was held not liable, although the charges were false.⁵⁶ But if he had not acted in good faith he would have been liable.

So, too, a common interest in the matters complained of may be enough to establish privilege. Thus a report of auditors reflecting upon the manager of a company and

⁵⁵ The learned judges who have settled the Draft Criminal Code propose that the opinion of Chief Justice Tindal and Mr. Justice Erle shall prevail.

⁵⁶ *Todd v. Hawkins* (1836) 8 C. and P. 88. *Adams v. Colveridge* (1885) was a case of this kind.

circulated by the directors among the shareholders was held privileged.⁵⁷

The proviso that the publication of defamatory matter in order to be privileged must not exceed, either in manner or extent, what is reasonably sufficient for the occasion, is important. If, in the first instance given above, A., instead of sending a private letter to C., were to publish the character of B. in a newspaper, or were to go to C. and state it openly in the presence of third persons, A. would be liable in an action for defamation; and in the last case cited the directors would have been liable if they had allowed the report to be issued to the general public or had advertised it in the public press.

(b) Publication in Courts of Justice.

“The publication of defamatory matter is privileged when it is made in any proceeding held before or under the authority of any Court of Justice, or in any inquiry held under the authority of any statute, or by order of Her Majesty or of any of the Departments of State, or of the Lord-Lieutenant.”⁵⁸

With regard to this, the only comment to be made is, that it would be unreasonable were the law otherwise. To hold a man responsible for something he is compelled by irresistible power to do is against conscience.

(c) Publication in Parliamentary Papers.

“The publication of defamatory matter is privileged when the publishing is to either House of Parliament and the matter complained of is contained in a petition to either House; or when the publishing complained of is a publishing by order or under the authority of either House of Parliament, or is the publishing of any extract from or abstract of any such paper, provided always such extract or abstract

⁵⁷ *Lawless v. Anglo-Egyptian Cotton Co.* (1869), L. R. 4. Q. B. 262; 38 L. J. Q. B. 129.

⁵⁸ The language of the Draft Criminal Code is adopted in this and the following statements of the law made within inverted commas.

is published in good faith and without ill-will to the person defamed.”⁵⁹

The protection of the publisher of Parliamentary papers was the subject of a memorable contest between the Courts and the House of Commons in *Stockdale v. Hansard* (1836), as to which see May’s Constitutional History, vol. ii. page 78. The matter is now placed beyond doubt.⁶⁰

(d) *Fair Reports of Proceedings.*

“The publication of defamatory matter is privileged if it be made in the publishing in good faith, and for the information of the public, of a fair report of the proceedings of either House of Parliament, or of the public proceedings of any court of justice, whether preliminary or final, or in the publishing in good faith of any fair comment upon any such proceedings.”

By the Newspaper Libel Act (1881),⁶¹ s. 2, “any report published in any newspaper⁶² of the proceedings of a public meeting shall be privileged if such meeting was lawfully convened for a lawful purpose, and open to the public, and if such report was fair and accurate, and published without malice, and if the publication of the matter complained of was for the public benefit; provided always that the protection intended to be afforded by this section shall not be available as a defence in any proceeding if the plaintiff or prosecutor can show that the defendant has refused to insert in the newspaper in which the report containing the matter complained of appeared, a reasonable letter or statement of explanation or contradiction by or on behalf of such plaintiff or prosecutor.”

As to reports of proceedings in either House of Parliament, that these are privileged, though containing matter

⁵⁹ This proviso becomes necessary from the decision in *Stevens v. Sampson* (1880) 5 Ex. Div. 53; 49 L. J. Ex. 120, as to which see *post*.

⁶⁰ See 3 and 4 Vict., c. 9.

⁶¹ 44 and 45 Vict., c. 60.

⁶² As to what is a newspaper within the Act, see *infra*, p. 141.

defaming some particular person, was decided in *Wason v. Walter* (1869).⁶³ There the *Times* had published a fair report of a debate in the House of Lords, in the course of which occurred matter defamatory of the plaintiff, who accordingly brought his action against the proprietor of the paper, and it was held that he could not recover.

As to reports of proceedings in the law courts, it matters not what court it be so long as it is a public court of justice.⁶⁴ If a judge sits in his private room to hear a case, a fair report of it will be privileged only if the public have free access to such room while the case is being heard. If he is sitting in private the report will not be privileged.⁶⁵ Proceedings before an arbitrator are not proceedings in a court of justice, and reports of them are not privileged, unless, perhaps, the arbitrator be appointed by Act of Parliament, as in the matter of the European and Albert Insurance Companies. A report of *ex parte* proceedings in a public court is privileged, even if the court have no jurisdiction to entertain the application made to it. Where, therefore, three London papers published reports of an *ex parte* application made to a police magistrate, in the course of which the applicant alleged something defamatory of the plaintiff, and the magistrate decided that he had no jurisdiction in the matter, it was held that the reports, being fair reports of what occurred in Court, were privileged.⁶⁶ So, too, where judicial proceedings last more than

⁶³ L. R. 4 Q. B. 73; 38 L. J. Q. B.

⁶⁴ *Rex v. Wright* (1799), 8 T. R. 293; *Lewis v. Levy* (1858), E. B. and E. 537; 27 L. J. Q. B. 282. A committee of either House of Parliament conducting an inquiry is a public court of justice. *Kane v. Mulvany* (1866), 2 Irish C. L. 402.

⁶⁵ See *Smith v. Scott* (1847), 2 C. and K. 580; *Ryalls v. Leader* (1865), L. R. 1 Ex. 296; 35 L. J. Ex. 185; *Myers v. Defries*, the *Times*, 27th July, 1877, cited in Odgers on Libel, p. 248.

⁶⁶ *Usill v. Hales and others* (1879), 3 C. P. D. 319; 47 L. J. C. P. 323.

one day, a report published in a newspaper every morning of the proceedings of the preceding day is privileged.⁶⁷

In all cases the report to be privileged must be a fair one—i.e., it must be accurate and impartial. Care must be taken that the opening statement of counsel is not reported as a statement of the real facts of the case where the evidence does not fully support it, for in such case the report will not be privileged. The statement of counsel may, however, be reported without fear, either in full or in brief, if only it is shown clearly that it is counsel's statement and does not read as if it were the result of the evidence given.⁶⁸ But a report which gives counsel's speeches and none of the evidence is not a fair report,⁶⁹ even though it states that the facts "as stated by counsel for the plaintiffs were" so and so.⁷⁰ A condensed report or abstract, if fair, is privileged the same as a verbatim report.⁷¹ It is sufficient if the report be substantially a fair account of what took place in court.⁷² When, therefore, a report is condensed, care must be taken that it fairly represents both sides of the case; it is too often the practice of reporters to give the plaintiff's version at length and the defendant's version very shortly: a jury may properly find that such a report is not a fair one.⁷³ But in all cases the whole report must be considered, and the jury must ask themselves what effect it would have upon an unprejudiced person who knew nothing of the case beforehand.

⁶⁷ *Lewis v. Levy*, *ubi sup.*

⁶⁸ *Piney v. Goodlake* (1866), 15 L. T. 676; *Ashmore v. Borthwick* (1885) 49 JP 792 -

⁶⁹ *Flint v. Pike* (1825), 4 B. and C. 473.

⁷⁰ *Saunders v. Mills* (1829), 6 Bing. 213; *Lewis v. Walter* (1821), 4 B. and Ald. 605.

⁷¹ Mellish L. J. in *Millissich v. Lloyds* (1877), 46 L. J. C. P. 404; 36 L. T. 423.

⁷² Per Lord Campbell in *Andrews v. Chapman* (1853), 3 C. and K. 286.

⁷³ *Duncan v. Thwaites* (1824), 3 B. and C. 556, where the evidence of one witness was omitted entirely.

When it appears that the report is clearly a fair one, and there is no charge of bad faith against the publisher of it, the judge may properly stop the case.⁷⁴ But it is generally a question for the jury, after hearing both sides, to say whether the report is substantially accurate, and was published *bonâ fide*.

It is permissible to publish a fair report of proceedings in a court of justice, although the publication of it may affect the character of persons not parties to the proceedings.^{74a}

It is necessary in all cases where privilege is relied on, to show that the report was published without malice. Where, therefore, the defendant sent to a newspaper a fair report of a case in which the plaintiff was concerned, but did so out of ill-will to the latter, the ill-will was held to destroy the privilege, and the defendant was held liable.⁷⁵ The newspaper proprietor, who in good faith received and published such a report, would not lose his privilege because the sender of it happened (unknown to him) to do so *mala fide*.⁷⁶

The report to be privileged must be confined to what actually took place. The reporter must state nothing else, and must not add defamatory remarks of his own. "If any comments are made," said Lord Campbell,⁷⁷ "they should not be made as part of the report. The report should be confined to what takes place in court, and the two things, report and comment, should be kept separate."

Except in so far as it has obtained it by statute,⁷⁸ a newspaper has no greater privilege than a private individual.⁷⁹ Therefore, a fair report of proceedings in

⁷⁴ *Millissich v. Lloyds* (1877), 46 L. J. C. P. 407.

^{74a} *Ryalls v. Leader* (1865), L. R. 1 Ex. 296; 35 L. J. Ex. 185.

⁷⁵ *Stevens v. Sampson* (1879), 5 Ex. D. 53 (C. A.); 49 L. J. Ex. 120.

⁷⁶ *Ibid.* ⁷⁷ In *Andrews v. Chapman*, *ubi sup.*

⁷⁸ Viz., by the Newspaper Libel and Registration Act, 1881 (44 and 45 Vict., cap. 60).

Per Brett L. J. in *Millissich v. Lloyds*, *ubi sup.*, and Bramwell L. J. in *Stevens v. Sampson*, *ubi sup.*

Parliament or a court of justice may be circulated in any shape and in any manner, provided it be so circulated without ill-will to the party defamed. The mode and extent of publication are, however, often the means of arriving at a conclusion as to whether there was such ill-will or not.⁸⁰

Reports of proceedings in a court of law are subject to the control of such court. "Every court," said Lord Justice Turner, in *Brook v. Evans*,⁸¹ has the power of preventing the publication of its proceedings pending litigation," though the power is seldom or never now exercised.

If a full report of proceedings in Parliament or in a court of justice would contain matter amounting to an obscene, blasphemous, or seditious libel, such matter must not be published, and if it is, the publisher is liable to be punished for publishing it.

Except in the case of newspapers within the Act of 1881, the only reports privileged are the reports of proceedings in Parliament and in courts of justice. Reports of meetings and of all other proceedings are not privileged; therefore, if in the course of any meeting, &c., defamatory matter be spoken or otherwise published, it must not be reported, or the publisher of the report will be liable,⁸² unless, indeed, it be published in a "newspaper," and be within section 2 of the Newspaper Libel Act quoted above.

As to this, it is to be observed that the word "newspaper" is by the same Act defined (for the purposes of such Act) to mean "any paper containing public news, intelligence or occurrences, or any remarks or observations therein printed for sale, and published in England or

⁸⁰ See *Millissich v. Lloyds*, *ubi sup.*, and *Salmon v. Isaac* (1869), 20 L. T. 885.

⁸¹ (1860) 29 L. J. Ch. 616.

⁸² See *Purcell v. Souler* (1877), 2 C. P. D. 215, C. A.; 46 L. J. C. P. 308.

Ireland periodically, or in parts or numbers at intervals not exceeding *twenty-six* days between the publication of any two such papers, parts or numbers; also any paper printed in order to be dispersed and made public weekly or oftener, or at intervals not exceeding *twenty-six* days, containing only or principally advertisements."

Therefore the Act does not apply to magazines, or to monthly trade papers. These are not entitled to privilege for reports of public meetings—an oversight, surely.

The section conferring the privilege is a cumbrous one, and open to criticism at at least half a dozen points. These, however, may be left to be discovered by the ingenuity of counsel when occasion shall arise. It will be well, however, to point out that privilege is extended only to reports of proceedings at public meetings, lawfully convened and open to the public. The report of proceedings at a meeting not coming within these words is not privileged even in a newspaper.

Every one has *the right to comment* orally or in writing⁸³ upon any proceedings of which a fair report is permitted to be published, provided only that such comment is *fair*, and that the publication of it is honest and without ill-will towards any party involved in the comment.

The fairness of the comment is a matter for the jury to determine on the whole circumstances.

An adverse comment, if fair, is *prima facie* privileged, but it is open to the plaintiff to show that the publication of it was not *bonâ fide*, but was made out of ill-will to the plaintiff, and if he succeeds in doing so, he is entitled to a verdict.

It has been held that fair and legitimate criticism in newspapers on the conduct or motives of individuals as disclosed by reports of proceedings in Parliament are privileged.⁸⁴

⁸³ "Writing" always includes printing and all other methods of conveying ideas on paper or other substance.

Wason v. Waller (1879) L. R. 4 Q. B. 73; 38 L. J. Q. B. 34.

As to legal proceedings, the conduct of all concerned in them is open to legitimate criticism. If by some oversight or want of firmness on the part of the judge or jury a criminal escapes, and by a miscarriage of justice a scandal is brought upon its administration, and the criminal is let loose on society when he ought to be suffering punishment, a public writer is privileged in remonstrating with that tribunal, if he does so fairly and with reasonable exercise of judgment.⁸⁵

The evidence of a witness given in a public court of justice may in like manner be criticised with impunity.⁸⁶

A libellous heading to a fair report will render the author and publisher of it liable. Where, therefore, a fair report of a trial, in which transpired matter redounding to the discredit of the plaintiff was headed "Shameful conduct of an attorney," the defendant was held liable.⁸⁷ But in a later case, where a report in the *Daily Telegraph* was headed "Wilful and corrupt perjury," it was held, after the jury had returned a verdict for the defendant, that they having so found, this heading must be taken as a description of the nature of the charge, and not as an imputation by the publisher of the perjury in fact.⁸⁸

Reports of proceedings and comments upon them may often be justified under one or other of the two next headings.

(e) *Fair Discussion.*

"The publication of defamatory matter is privileged when the person publishing it honestly and on reasonable grounds believes it to be true, and it is relevant to any subject of public interest the public discussion of which is for the public benefit."

Here the defendant has to show three things: 1. That he on reasonable grounds believed the defamatory matter

⁸⁵ *Risk Allah Bey v. Whitehouse* (1868), 18 L. T. N. S. 615.

⁸⁶ *Kane v. Mulcahy* (1866), 2 Irish Common Law, 402.

⁸⁷ *Lewis v. Clement* (1820), 3 B. and A. 702.

⁸⁸ *Lewis v. Levy* (1858), E. B. & E. 537; 27 L. J. Q. B. 282.

to be true ; 2. That it was relevant to a subject of public interest ; 3. That it was for the public benefit that such subject should be publicly discussed. If he does this he is entitled to succeed, unless the plaintiff shows want of honesty on his part in publishing the libel, in which case the privilege is at once destroyed.

It was laid down by Cockburn, C. J., in *Risk Allah Bey v. Whitehouse*,⁸⁹ that if a writer in the public press writes that which turns out to be not founded upon the inferences he draws, and is unable to justify the conclusion at which he has arrived, yet if he has acted in good faith in the discharge of his duty, bringing to it the amount of care, reason, and judgment which a man who takes upon himself to discuss public questions is bound to bring, so that the jury is of opinion that he has acted reasonably and properly, he will be privileged. See also *Wason v. Walter*, cited on page 149.

It is difficult, if not impossible, to lay down any test for "a subject of public interest," but there is not in practice much difficulty in determining whether any particular subject is of public or only of private interest. It has been held that the testimony of witnesses given in public courts on a subject of public interest is itself a matter of public interest, and that an imputation that the evidence of a particular witness is unfounded or incautious will be privileged if it comes within the rules as to honesty of criticism.⁹⁰ So, also, where an action was brought for the publication in a newspaper of a report of an inspector of charities under the Charitable Trusts Acts, containing a letter, written some years before, reflecting on the plaintiff in his management of a college, it was held that the matter was one of public interest.⁹¹ So, too, the publications of a man who professes to be in possession of a specific to

⁸⁹ (1868) 18 L. T. N. S. 615.

⁹⁰ *Hedley v. Barlow* (1865), 4 F. and F. 224.

⁹¹ *Cox v. Feeney* (1863), 4 F. and F. 13.

cure maladies are matters of public interest.⁹² On the other hand, the circulation and position of a newspaper have been held not to be matters of public interest.⁹³

(f) *Fair Comment.*

“The publication of defamatory matter is privileged when such matter consists in fair comments upon any person who takes part in public affairs, provided such fair comments are confined to the public conduct of such person in such affairs.

“It is also privileged when the matter complained of consists in fair comments on any published book or other literary production, or any composition or work of art or performance publicly exhibited, or any other communication made to the public on any subject, if such comments are confined to criticism on such book or literary production, composition, work of art, performance, or communication; but the privilege does not extend to or justify the publishing of defamatory matter on any person other than the author, artist, or publisher of such book or literary production or composition or work of art, or the performer, manager, or conductor of such performance, or the maker of such communication; and further, the privilege does not extend to or justify the publishing of defamatory matter on such author, artist, publisher, performer, manager, conductor, or maker, except so far as it fairly arises out of such criticism.”

With regard to criticism of persons taking part in public affairs, very great latitude is allowed. The only restrictions are that the critic must be fair, and must confine himself to the public conduct of the person criticised. The strong observations on the conduct of this or that statesman constantly found in the public press are privileged on this ground, and the immunity enjoyed by the publishers

⁹² *Hunter v. Sharpe* (1866), 4 F. and F. 983; 15 L. T. N. S. 44.

⁹³ *Latimer v. Western Morning News Co.* (1872), 25 L. T. N. S. 44.

of *Punch* and other satirical papers in respect of their cartoons and caustic observations is referable to the same rule. The private conduct of public men is not open to public criticism, except in so far as it affects their public relations.⁹⁴

All persons who take part in public affairs lay themselves open to public criticism, *e.g.*, statesmen, magistrates,⁹⁵ clergymen,⁹⁶ barristers (at least if holding office under the Crown),⁹⁷ waywardens,⁹⁸ vestrymen, public agitators,⁹⁹ candidates for public offices,¹ petitioners to Parliament.²

In *Wason v. Walter*,³ it was decided that public comment on the conduct or motive of an individual is privileged if it has been made with an honest belief in its justice, and the writer has brought to the task a reasonable degree of judgment and moderation so that the result may be what a jury shall deem, under the circumstances of the case, a fair and legitimate criticism on the conduct and motives of the party who is the object of the criticism.

The right to comment on the public acts of public men belongs to every citizen, and is not the peculiar privilege of the Press.⁴

With reference to the criticism of *literary productions*,

⁹⁴ *Wilson v. Reed* (1860), 3 F. and F. 149; *Seymour v. Fuller* (1862), 3 F. and F. 372.

⁹⁵ *Hibbins v. Lee* (1864), 4 F. and F. 243.

⁹⁶ *Kelly v. Tinning* (1865), L. R. 1 Q. B. 690; 35 L. J. Q. B. 940.

⁹⁷ *Seymour v. Butterworth*, *ubi supra*.

⁹⁸ *Harle v. Catherall* (1866), 14 L. T. 801.

⁹⁹ *Odger v. Mortimer* (1873), 28 L. T. 472.

¹ *Davis v. Duncan* (1871), L. R. 9 C. P. 39; 43 L. J. C. P. 143.

² *Wason v. Walter*, *ubi infra*.

³ (1863) L. R. 4 Q. B. 73; 33 L. J. Q. B. 31. The judgment of the Lord Chief Justice Cockburn in this case deserves careful study, reviewing as it does several phases of the law of libel.

⁴ *Kant v. Mulvany* (1866), 2 Ir. C. L. 402.

the following cases may be referred to : *Carr v. Hood*,⁵ where it was held that not only a book, but its author as such might be held up to ridicule ; *Macleod v. Wakeley*,⁶ where it was decided that whatever is fairly written of a work and can be reasonably said of it, or of its author, as connected with it, is not actionable, unless the defendant, under the pretext of criticising the work, takes an opportunity of attacking the character of its author ; *Strauss v. Francis*,⁷ where it was laid down that a condemnatory criticism upon a literary work, however strong, and even though imputing profanity or indecency, is privileged, unless it is so unfair and reckless in its character that it may be presumed to have been published, not honestly but maliciously.

On the other hand, if the critic in criticising a work goes out of his way to attack the private character of the author, this is a libel for which both he and the printer and publisher of it can be held responsible.⁸

And a writer in one newspaper is not justified in making calumnious attacks on the private character of a writer in another paper.⁹

The same principles apply to the criticism of *works of art* publicly exhibited, published *musical productions*, *articles sent for review or publicly advertised*, and *public performances* of all kinds. Therefore, when a critic wrote of a painting exhibited at the Royal Academy that it was "a mere daub," it was held that no action would lie, it being the critic's honest opinion of the painting, although others might differ from him.¹⁰ And where a firm of

⁵ (1808) 1 Camp. 355.

⁶ (1828) 3 C. and P. 311.

⁷ (1866) 4 F. and F. 1107 ; 15 L. T. 674.

⁸ *Fraser v. Berkeley* (1836), 7 C. and P. 621.

⁹ *Stuart v. Lovell* (1817), 2 Starkie 93.

¹⁰ *Thompson v. Shackell* (1828), 1 M. and M. 187.

tradesmen advertised a bag of theirs as "the Bag of Bags," and the defendant published a criticism of it, saying, "The title is very silly, very slangy, and very vulgar," it was held to be a question for the jury whether this was meant to convey an imputation on the firm's way of managing their business, or whether it was only an expression of the writer's honest opinion as to the name or title of the bag: in the latter case it would be no libel, in the former it might be one.¹¹ So a critic may with impunity comment adversely on the acting of an actor in a public theatre, or the singing or playing of a performer at a public concert or other public entertainment, or, indeed, on the performance of a performer in public of any kind, so long as the criticism is fair and honest.

A *tradesman's advertisement*, placard, or handbill is open to fair criticism as if it were a book or a work of art.¹²

A *place of public entertainment* may also be commented upon in like manner.¹³ The criticism, however adverse, is completely privileged, if only it is *bond fide*.

It is to be borne in mind that it is only the criticism of publications, performances, &c., *which are before the public* that is privileged. If A paints a picture for B, a private person, and C publishes of it that it is a wretched daub, he cannot claim privilege; and so if persons perform a drama in private, privilege cannot be claimed in respect of an adverse criticism of their performances.

(g) *Seeking Remedy for Grievance.*

"The publication of defamatory matter is privileged when it is made for the purpose in good faith of seeking remedy or redress for any public or private wrong or grievance from a person who has or is reasonably believed by the person publishing to have the right to remedy or redress such wrong or grievance; provided that such defamatory

¹¹ *Jenner v. A'Beckett* (1871), L. R. 7 Q. B. 11; 41 L. J. Q. B. 14.

¹² *Paris v. Levy* (1860), 9 C. B. N. S. 342; 30 L. J. C. P. 11.

¹³ *Dibdin v. Swan* (1793), 1 Esp. 28.

matter is honestly believed to be true, and is relevant to the remedy or redress sought; provided also that such publishing does not in manner or extent exceed what is reasonably sufficient for the occasion."

Under this head fall communications made to State officials (including the Police) imputing crime or misconduct to any person,¹⁹ complaints of church dignitaries or officials made by a churchman to a bishop,²⁰ and the like. It matters not that the complaint be made in fact to the wrong person if that person is honestly believed to be the right one.²¹

(h) *Publishing upon Invitation or Challenge.*

"The publication of defamatory matter is privileged when it is made on the invitation or challenge of the person defamed thereby, or if it is necessary to publish such matter in order to refute some other defamatory statement published by that person concerning the alleged offender; provided that such defamatory matter is honestly believed to be true, and is relevant to the invitation, challenge, or the required refutation; provided also that the publishing does not in manner or extent exceed what is reasonably sufficient for the occasion."

Instances of publishing libels on invitation or challenge are to be found in cases where an assertion having been made, or a rumour having been circulated, affecting the character of a man, he asks what is meant, or challenges inquiry into his conduct, and defamatory matter is there-

¹⁹ *Fairman v. Ives* (1822), 5 B. and Ald. 647 (per Best, J.). *Padmore v. Lawrence* (1849), 11 A. and E. 382 (per Coleridge, J.). *Hooper v. Truscott* (1836), 2 Bing. N. C. 457. *Amann v. Damm* (1860), 8 C. B. N. S. 597; 29 L. J. C. P. 313. *Harrison v. Bush* (1855), 5 E. and B. 344; 25 L. J. Q. B. 25 and 99 (Ex. Chr.).

²⁰ *James v. Borton* (1845), 2 C. and K. 4.

²¹ *Kershaw v. Bailey* (1848), 1 Ex. 743; 17 L. J. Ex. 129. For an instance where want of good faith destroyed the privilege, see *Blagg v. Sturt* (1845), 10 Q. B. 899; 16 L. J. Q. B. 39.

upon published;²² or where one man makes a personal attack on another in the public press and the other retorts through the same medium.²³

What Amounts to Publication.

As already stated, "publishing a defamatory or other libel is exhibiting it in public, or causing it to be read or seen, or showing or delivering it or causing it to be shown or delivered with a view to its being read or seen by the person defamed, if any, or by any other person."²⁴

The leading case on the publication of libels is *Rex v. Burdett*.²⁵

In civil proceedings a libel which has not been read or seen by any person but the author and the person defamed has not been published.²⁶

A libel written by the author with his own hand and handed by him to a clerk to have a copy taken of it is thereby published.²⁷

²² *Hopwood v. Thorn* (1849), 8 C. B. 293; 19 L. J. C. P. 94. *Griffiths v. Lewis* (1845), 7 Q. B. 61; 14 L. J. Q. B. 199. *Taylor v. Hawkins* (1851), 16 Q. B. 308; 20 L. J. Q. B. 313. *Duke of Brunswick v. Harmer* (1849), 14 Q. B. 185; 19 L. J. Q. B. 20.

²³ *Laughton v. Bishop of Sodor and Man* (1872), L. R. 4 P. C. 495; 42 L. J. P. C. 11. *Hemings v. Gasson* (1858), E. B. and E. 346; 27 L. J. Q. B. 252. *Koenig v. Ritchie* (1862), 3 F. and F. 413. *O'Donoghue v. Hussey* (1871), 5 Irish Rep. C. L. 124. *Dwyer v. Esmonds* (1878) 2 L. R. (Ireland) 243.

²⁴ This statement, taken from the Draft Criminal Code, requires qualification so far as civil proceedings are concerned. Showing or reading to the party defamed is not "publication" so as to entitle a plaintiff to maintain an action for damages (*Barrow v. Lewellin*, Hob. 62), but it is punishable because it tends to a breach of the peace (*ibid.*).

²⁵ (1820) 4 B. and Ald. 95; see also *Johanson v. Hudson* (1836), 7 A. and E. 233 n. *Brunswick (Duke) v. Harmer* (1849), 14 Q. B. 185 19 L. J. Q. B. 20.

²⁶ *Clutterbuck v. Chaffers* (1816), 1 Stark. 471.

²⁷ *Kiene v. Ruff* (1855), 1 Clarke (Iowa Reports), 482.

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A libel contained on a postcard is published when it is posted,²⁸ and a libellous telegram is published when it is handed in to be despatched.²⁹

A libel read only by the wife of the person defamed has been published.³⁰

A libel in a foreign tongue is published as soon as it is read or seen by some third person who understands that tongue.³¹

MS. given out to a compositor to set up is published if the compositor reads it.³²

It has been held that proof of the posting of a libel contained in a sealed letter addressed to a person other than the person defamed, is sufficient evidence of the publication of the libel.³³

Proof that a print containing the libel has been bought is *primâ facie* evidence that the libel has been published.³⁴

It is submitted by the author that a person who dictates defamatory matter to an amanuensis publishes a libel as soon as the amanuensis has written the defamatory matter, but he knows of no reported case of the kind.

Who are Liable for Libels.

Speaking generally, every person who by himself or his agent publishes an actionable or punishable libel is liable to pay damages or to be prosecuted.

²⁸ *Robinson v. Jones* (1879), 4 L. R. (Ireland) 391.

²⁹ *Whitfield v. S. E. Ry. Co.* (1858), E. B. and E. 115; 27 L. J. Q. B. 229. *Williamson v. Frece* (1874), L. J. 9 C. P. 393; 43 L. J. C. P. 161.

³⁰ *Wenman v. Ash* (1853), 13 C. B. 836; 22 L. J. C. P. 190.

³¹ *Odgers on Libel*, p. 151; and see *Aman v. Dann* (1860), 8 C. B. N. S. 597; 29 L. J. C. P. 313.

³² *Baldwin v. Elphinston* (1775), 2 W. Bl. 1037; see *Odgers*, p. 152.

³³ *Ward v. Smith* (1830), 6 Bing. 749; *Warren v. Warren* (1834), 4 Tyr. 830, 1 C. M. and R. 159; *Shipley v. Todhunter* (1836), 7 C. and P. 680; see *Ree v. Burdett* (1820), 4 B. and Ald. 95, and *Stephen's Digest of Criminal Law*, note to art. 270.

³⁴ *Duke of Brunswick v. Harmer* (1849), 14 Q. B. 185; 19 L. J. Q. B. 20; *Johnson v. Hudson* (1836), 7 A. and E. 233n.

Under certain circumstances, however, a person who has published a libel may be liable in damages, and yet not liable to punishment ; and, again, in some cases the responsibility which *primâ facie* rests upon a person in respect of a libel may, under certain circumstances, be got rid of. We will consider all these matters.

However gross a libel may be, the defendant in an action, or in a criminal prosecution, cannot be made liable in respect of it unless it be proved that he published it or procured it to be published.

Formerly a master was under all circumstances held liable, both civilly and criminally, for the acts of his servants in and about his business. In 1727 a woman was held liable at a criminal trial for publishing a libel when the facts were that the paper containing it was brought into her shop and sold at a time when she was ill in bed and knew nothing of what was going on ! ^{31a} The law is now, happily, more reasonable, for, by Lord Campbell's Act (6 & 7 Vict., c. 96, s. 7), it is provided that "whensoever upon the trial of any indictment or information for the publication of a libel, under the plea of not guilty, evidence shall have been given which shall establish a presumptive case of publication against the defendant by the act of any other person by his authority, it shall be competent to such defendant to prove that such publication was made without his authority, consent, or knowledge, and that the said publication did not arise from want of due care or caution on his part."

In order to deal with the subject clearly, we will divide libels into three classes : 1. Libels merely written and not multiplied ; 2. Libels written and copied ; and 3. Libels printed.

Class 1. *Libels merely written and not multiplied.*—Here the only persons who can be charged as libellers are (a) the author, (b) the amanuensis (if any), (c) any person who

^{31a} Nutt's Case, Fitzgibbon, 47.

shows or reads the libel to a third, (*d*) the postman or other person who carries the libel from one to another.

If the libel be not seen by a person other than the person defamed, the writer of it is not liable in civil proceedings.

If the author of a libel, before letting any one see it, puts it away in a proper place, and some one goes to that place and sees it—if there is no negligence on the part of the author, he is not liable.³⁵

If the author gets the libel written for him, it is submitted that he is liable, both civilly and criminally, though it never be sent anywhere: he has published it to his amanuensis.

If the libel is sent by the author or the amanuensis (if any) to a person other than the person defamed, and it is seen and understood by such person, both the author and the amanuensis are liable, civilly and criminally; and this even though it was sent to such third person by mistake, as where it was intended for the person defamed, but was by inadvertence put in an envelope addressed to another person.³⁶

If the libel is sent in a sealed envelope addressed to the person defamed, and by mistake some one else opens it and reads it, the author of the libel is probably liable.³⁷

If the libel is sent in a sealed envelope addressed to the person defamed, but it is known to the author that that person habitually has his letters opened by his clerk, the author may, by the jury, be held liable in either a civil or criminal proceeding;³⁸ and the amanuensis (if any) will probably be liable too.

³⁵ Odgers on Libel, p. 154.

³⁶ *Fox v. Broderick* (1864), 14 Irish Rep. Com. Law, 453.

³⁷ See *Ree v. Paine* (1695), 5 Mod. 163. Wherever the author is not liable, *à fortiori* he who has simply acted as amanuensis is not liable.

³⁸ *Delacroix v. Thevenot* (1817), 2 Stark. 63.

If the libel after being received by the person defamed is read out or shown by him to a third person, the author is not civilly liable for this, neither is the amanuensis (if any); for it is the own fault of the person defamed that such third person knew anything of the matter. But they may be punished criminally, as the libel tends to a breach of the peace.³⁹

Any person other than the person defamed who shows or reads the libel to a third is liable, civilly and criminally, if at the time of so reading or showing it he knows or has reason to suspect the nature of the writing. The postman or other person who carries the libel is not liable if he is ignorant of its contents.⁴⁰ Probably a postman is free from liability under all circumstances, because he has no option but to carry and deliver a letter or postcard.

Class 2. *Libels written and copied.*—The persons who may be charged are the same as in Class 1, and the copyist in addition.

The liability of the persons mentioned under Class 1 remains the same, with this addition, namely, that the author and the amanuensis (if any) are both liable, civilly and criminally, as soon as the libel is seen by the copyist.⁴¹

The copyist is liable, both civilly and criminally, if after becoming acquainted with its nature he permits the libel to be published.

Class 3. *Libels printed.*—This is by far the most important class, as well as the one which chiefly concerns printers and newspaper men. Inasmuch as the law of libels inserted in newspapers and other periodicals differs in some particulars from that of libels contained in other printed matter, it is desirable to divide the class into two divisions—viz., (1) Libels contained in periodicals, and (2) Libels not contained in periodicals.

³⁹ *Barrow v. Lewellin* (1646), Hob. 62.

⁴⁰ *Day v. Bream* (1837), 2 M. and Rob. 54.

⁴¹ *Kicne v. Ruff* 1855). 1 Clarke (Iowa), 482.

(1) *Libels contained in periodicals*.—By periodicals is meant newspapers, reviews, magazines, and other prints or writings periodically published. Here we have, in addition to the persons who may be liable under classes 1 and 2, and whose liability remains as there stated, a number of other persons of whom the most important are the compositor, the proof-reader, the pressman, the overseer of the printing-office, the master printer, the editor, the reporter, the publisher, the publisher's assistant, the proprietor, and the newsvendor. We will consider the matter shortly with reference to all these, assuming throughout that they have acted in the usual course of their business.

Each of the persons mentioned is liable both civilly (*i.e.*, in damages) and criminally (*i.e.*, in punishment) where he can be said to have "published" the libel, or to have aided and abetted in its publication. This involves at the present day (1) knowledge on the part of the defendant at the time of the "publishing" of the nature of the matter complained of, actually acquired, or which, but for the negligence of the defendant, might have been acquired; or (2) authority to publish the libel either actually given or presumed by law to have been given by the defendant.⁴²

Thus the *compositor* and the *proof-reader* are each liable, civilly and criminally, if they knew what they were setting up or passing for press; in other words, if they understood the phrases and sentences used. It is no defence for them to say that they did not know that those phrases and sentences constituted a libel, for it is their duty to know what amounts to a libel. The writer does not know of proceedings ever being taken against the mere workmen engaged in printing a libel, but there is no reason why such proceedings should not be taken if the party aggrieved so pleased. The defence in the case of a compositor would probably be that he set up the matter mechanically, not troubling himself about its meaning, and if the jury so

⁴² See *Emmens v. Pottle*, *infra*; *Reg. v. Holbrook* (1878), 4 Q. B. D. 42; 48 L. J. Q. B. 113.

thought they would find a verdict in his favour. The proof-reader might have more difficulty with a defence of this sort, for it is his duty to discover the sense of the words. As to the *pressman*, his case is even better than the compositor's: all he looks to is to get a proper impression: it is no concern of his to discover the literary nature of the formes he is working off. Still, if he does discover it, and lets it go, he will be liable, for it is no answer to an action or prosecution for a wrong committed that the party committing it did so at the bidding of another or as his servant,⁴³ unless, indeed, he be forced under grievous threats, so as not to be a free agent. As to the *overseer*, much would depend upon the extent of his duties. If they were simply to look after the mechanical production of the work executed in the printing-office, he would be excused, unless he had actual knowledge of the nature of the matter complained of, or knew that it was likely to be libellous.

The same applies to the *publisher's assistants* and to the *newsvendors*. When they disseminated the matter complained of, did they know its nature, or were they negligently ignorant of it, or had they or ought they to have had any reason to suppose that the periodical published by them, and containing the matter complained of, was likely to contain libellous matter?

The onus of showing knowledge, negligent ignorance, or authority by the defendant to publish is upon the prosecution in criminal trials for libel, but in civil actions the burden is on the other side; there the defendant is *primâ facie* liable if shown to have technically "published" the libel, and it is for him to show absence of knowledge and absence of negligent ignorance, &c.

The law on this part of our subject was laid down by the Court of Appeal in 1885 in the case of *Emmens v. Pottle*.⁴⁴ There the defendants were newsvendors in a large way of business at the Royal Exchange, London, and one of their

⁴³ See *ante*, under Master and Servant, page 97.

⁴⁴ 16 Q. B. D. 354; 55 L. J. Q. B. 51.

assistants had in the ordinary course of business sold to one Clarke copies of a periodical called *Money*, and thereby made a slight profit. The copies contained a libel on the plaintiff, and he sued Messrs. Emmens for damages for disseminating it. At the trial before Mr. Justice Wills and a jury, the jury, in answer to questions put to them by the judge, found "that the defendants did not, nor did either of them, know that the newspapers at the time they sold them contained libels on the plaintiff; that it was not by negligence on the defendants' part that they did not know that there was any libel in the newspapers; and that the defendants did not know that the newspaper was of such a character that it was likely to contain libellous matter, nor ought they to have known so." Upon these findings the judge ordered judgment to be entered for the defendants. The plaintiff appealed, and urged that inasmuch as the proprietor of a newspaper is liable in damages for a libel contained in it, even though the publication takes place in his absence and without his knowledge, so, on the same principle, a man who makes a profit by the sale of the newspaper should be held liable for a libel in it; that a newsvendor ought not to be allowed to disseminate a libel without being responsible for it, and that a man who deals in dangerous articles ought to be liable for any injury which is caused by them. In giving judgment, Lord Esher, M.R., said: "I do not intend to lay down any general rule as to what will absolve from liability for a libel persons who stand in the position of these defendants. But it is a material element in their position that the jury have found in their favour as they have done. I agree that the defendants are *primâ facie* liable. They have handed to other people a newspaper in which there is a libel on the plaintiff. I am inclined to think that this called upon the defendants to show some circumstances which absolve them from liability, not by way of privilege, but facts which show that they did not publish the libel. We must consider what the position of the defendants was. The

proprietor of a newspaper, who publishes the paper by his servants, is the publisher of it, and he is liable for the acts of his servants. The printer of the paper prints it by his servants, and therefore he is liable for a libel contained in it. But the defendants did not compose the libel on the plaintiff, they did not write it or print it; they only disseminated that which contained the libel. The question is whether, as such disseminators, they published the libel? If they had known what was in the paper, whether they were paid for circulating it or not, they would have published the libel, and would have been liable for so doing. That, I think, cannot be doubted. But here, upon the findings of the jury, we must take it that the defendants did not know that the paper contained a libel. I am not prepared to say that it would be sufficient for them to show that they did not know of the particular libel. But the findings of the jury make it clear that the defendants did not publish the libel. Taking the view of the jury to be right, that the defendants did not know that the paper was likely to contain a libel, and, still more, that they ought not to have known this, which must mean, that they ought not to have known it, having used reasonable care—the case is reduced to this, that the defendants were innocent disseminators of a thing which they were not bound to know was likely to contain a libel. That being so, I think the defendants are not liable for the libel. If they were liable, the result would be that every common carrier who carries a newspaper which contains a libel would be liable for it, even if the paper were one of which every man in England would say that it was not likely to contain a libel. To my mind the mere statement of such a result shows that the proposition from which it flows is unreasonable and unjust.” Lord Justice Cotton concurred in the judgment of the Master of the Rolls, and Lord Justice Bowen said: “The jury have found as a fact that the defendants were innocent carriers of that which they did not know contained libellous matter, and which they had

no reason to suppose was likely to contain libellous matter. A newspaper is not like a fire : a man may carry it about without being bound to suppose that it is likely to do an injury. It seems to me that the defendants are no more liable than any other innocent carrier of an article which he has no reason to suppose likely to be dangerous. But I by no means intend to say that the vendor of a newspaper will not be responsible for a libel contained in it, if he knows, or ought to know, that the paper is one which is likely to contain a libel."

This case is of such great importance that we offer no apology for setting out the judgments at length.

It will be observed that Messrs. Emmens escaped because the jury were able to find as they did. Newsvendors are not bound to read through a copy of every issue of every periodical they sell, but they ought to make themselves acquainted with the natures of the papers they deal in. They should therefore look at the first two or three numbers with the object of doing so, or they may have a difficulty in satisfying a jury that their want of knowledge of the character of the paper is not due to their negligence. Most newspapers and magazines may be sold with impunity, but some of the so-called "Society papers" which trade on scandal are circulated at the peril of the sellers.

A man who gives or lends another a periodical containing a libel is in the same position as a newsvendor.

The *editor* is responsible civilly for any libel contained in any issue which he has actually edited. If he should not have edited the particular issue containing the libel he is not liable, but the acting editor is. A *sub-editor* is responsible civilly if the libel is in that part of the issue which he has actually sub-edited. In order to make an editor (or sub-editor) criminally responsible for a libel which has been published in a periodical edited (or sub-edited) by him, it is necessary to show not only that he is editor, but that he directed the insertion of the libel in question.⁴⁵

⁴⁵ *Reg. v. Ramsay* (1883), 15 Cox C.C. 231.

A *reporter* is author of his report, and if it be libellous he is responsible both civilly and criminally, his criminal liability, however, being subject to the provisions of the Newspaper Libel Act, 1881, respecting reports of public meetings (see *supra*, page 140).

The *master printer* is responsible both civilly and criminally for all libels published in papers printed by him or his servants. He makes a profit out of the printing, and it is his duty to make himself acquainted with what is printed in his printing-office. Ignorance on his part will not excuse him.

The "*publisher*" of the periodical is equally responsible with the master printer, both civilly and criminally, for every libel in a periodical of which he is the publisher, and for similar reasons. In London the publishers of the chief newspapers are mere servants of the proprietors, yet they are responsible both civilly and criminally.⁴⁶

The *proprietor* of a periodical is always responsible in damages for any libel published therein. He used to be held responsible criminally also, but of late years the iniquity of holding criminally responsible a man, or it may be a woman, who has taken no part in the conduct of the paper has led to a change in, or shall we rather say a better interpretation of the law. The leading case on this subject is *Reg. v. Holbrook*,⁴⁷ decided in 1878 by Lord Chief Justice Cockburn and Mr. Justice Lush against the opinion of Mr. Justice Mellor. That was a criminal information for libel against the proprietors of the *Portsmouth Gazette*, and it appeared that the defendants intrusted the editorial department of the paper to one Green, who stated in evidence that they appointed him with general authority to conduct the paper, that they left it entirely to his discretion what should be put in the paper, and that they never took notice of his articles one way or the other. The libel in question

⁴⁶ See *Usill v. Hals* (1878), 3 C. P. D. 179—a civil action where the defendants were publishers of the class referred to.

⁴⁷ 4 Q. B. D. 42; 48 L. J. Q. B. 113.

was in the form of a letter, and was inserted by Mr. Green without the knowledge or express authority of the defendants, one of whom was absent from Portsmouth at the time. It was contended that these facts entitled the defendants to a verdict under sect. 7 of Lord Campbell's Libel Act (6 & 7 Vict., c. 96).^{47a} The judgments are of considerable length, and in the result the Court decided that the general authority given to the editor was not by itself evidence that the defendants had authorised or consented to the publication of the libel.

The criminal responsibility of proprietors and vendors of newspapers and other periodicals is defined in the Draft Criminal Code, and although in some heads of law the Draft Code proposes to make changes, it is believed that the following extracts state the law at present existing on the subject in hand :—

“Every proprietor of any newspaper, review, magazine, or other writing or print periodically published (hereinafter called periodical) is *primâ facie* criminally responsible for defamatory matter inserted or published therein : provided that such *primâ facie* liability may be rebutted by proof that the particular defamatory matter was inserted in such periodical without such proprietor's cognizance, and without negligence on his part.

“General authority given to the person actually inserting such defamatory matter to manage or conduct as editor or otherwise such periodical, and to insert therein what he in his discretion thinks fit, shall not be negligence within the proviso lastly hereinbefore contained, unless it be proved that the proprietor, when originally giving such general authority, meant that it should extend to inserting and publishing defamatory matter, or continued such general authority knowing that it had been exercised by inserting defamatory matter in any number or part of such periodical.”

“No one shall be guilty of an indictable offence by

^{47a} Set out on page 155.

selling any number or part of such periodical, unless he knew either that such number or part contained defamatory matter or that defamatory matter was habitually contained in such periodical.

“Upon any trial for publishing a defamatory libel contained in a periodical, after evidence of the publishing of the number or part of the periodical containing the alleged defamatory matter is given, sufficient in the opinion of the Court for such purpose, other writings or prints purporting to be other numbers or parts of the same periodical previously or subsequently published shall be admissible in evidence for the prosecution or the defence without further proof.”

(2.) *Printed Libels Published otherwise than in Periodicals.*—These include libels in printed letters, circulars, leaflets, pamphlets, and books. As regards all of these the liabilities of author, amanuensis, compositor, reader, overseer, and master printer are the same as in the case of a libel in a periodical. The customer or employer of the printer is also liable as a publisher of the libel, for whoever procures an act to be done by others is responsible as if he had done it himself.

As regards printed letters, circulars, and the like, the only other persons who can incur liability for libels therein are the disseminators of them, and it is conceived that their liability would depend upon the principles laid down in respect of newsvendors—namely, upon whether they knew or ought to have known the character of the matter they disseminated. In the case of a mere office lad no one would impose upon him the duty of finding out the nature of a circular he was ordered to fold and post, but in that of a more responsible servant, such as a clerk or shopman, there would be more difficulty, and his case would probably be governed by the same rules as that of a bookseller or bookseller's assistant, which we shall consider directly.

As regards pamphlets and books, it may be taken gene-

rally that the *publisher* of them—that is, the person whose name is on the title-page, or who procures them to be disseminated—is civilly liable for any libel they may contain, because it is his duty to find out the nature of works before he publishes them. And there are few cases in which he could escape criminal liability also, for he would be liable *prima facie*, and could only get a verdict in his favour if he could prove—what would generally be very difficult—that the publication was made “without his authority, consent, or knowledge, and did not arise from want of due care or caution on his part.”⁴⁸ A master *bookseller* would generally be in much the same position as the publisher, for it is his duty to make himself acquainted with the nature of the books he sells.⁴⁹ But having regard to the decision in *Emmens v. Pottle*,⁵⁰ it is hardly likely that a bookseller would now be held liable, if he, with no knowledge of its nature, sold a libellous work written by an author who had previously published many works none of them libellous. It can hardly be seriously contended now, as it was in *Rex v. Cuthell*,⁵¹ that a bookseller is bound to read all the books he sells, or that he sells them at his peril. In that case the defendant was a seller of books, chiefly classical and none political: he had sold some non-political works for the Rev. G. Wakefield, and when the latter sent him for sale another work, which turned out to be a seditious libel, he sold it believing, as he swore, that it was similar in kind to the previous works of that author, who had, in fact, never before written any political work, or intimated his intention of doing so. The book had been printed elsewhere for Mr. Wakefield, who sent some copies to Cuthell and other

⁴⁸ Lord Campbell's Act, see page 155.

⁴⁹ *Rex v. Cuthell* (1799), 27 How. St. Tr. 642.

⁵⁰ *Ante*, p. 159.

⁵¹ *Ubi supra*,

booksellers for sale. Mr. Cuthell began to sell them without due examination, but stopped the sale upon the first intimation of the nature and character of the work. He was prosecuted for selling the book, and, though defended by Erskine, found guilty.

The liability of a *bookseller's assistant* would be determined upon the same principles ; but it would generally be considered that his duty to become acquainted with the books he sold would be less than that of his master.

Procedure in Libel Cases.

As has already been stated, a person libelled may proceed against the offender either civilly or criminally ; that is, he may either bring an action to recover damages, or may prosecute to get the offender punished by fine or imprisonment, or bound over to keep the peace. In certain classes of cases also the repetition of a libel may be restrained by injunction. Actions for libel may not be brought in a County Court ;⁵² they must be instituted in the High Court, or in one of the local courts having jurisdiction, *e.g.*, the Lord Mayor's Court, and the Salford Hundred Court. Criminal proceedings ought not to be resorted to unless the libel is a bad one, or the remedy by action would be inadequate.

Proceedings in an Action for Damages.

The procedure in a libel case in the High Court is the same as in any other action for damages. The action commences with a writ, served on the defendant, directing him to enter an appearance or submit to judgment. If the defendant admits the libel he may suffer judgment to go by default, and in this case the plaintiff will cause a jury to be summoned in the Sheriff's Court to assess the damages he is entitled to. A day for the hearing will be

⁵² 9 and 10 Vict., c. 95, s. 58.

fixed, and the defendant will have notice of it, and then both sides will be entitled to give evidence and to be heard by counsel. The hearing will, in fact, be similar to that at a trial in Court, save that the only question to be decided on is what amount of damages the plaintiff is to receive : it *must* be something, but it may be anything from a farthing upwards. Where the libel is unquestionable it is often good policy for the defendant to allow judgment to go by default, but each case must be considered on its own merits, and dealt with accordingly.

If the person served with the writ wishes to defend he enters an appearance, and then the plaintiff serves his Statement of Claim, setting forth the libel and alleging that the defendant published it, and thereby caused damage to the plaintiff. The defendant in answer puts in his Defence, the plaintiff replies, and the case is then set down for trial, and comes on to be heard in its order. Either party may be made, pending the trial, to disclose to the other all documents in his possession or power relevant to the case, and to answer interrogatories. The hearing may be before a judge alone, but either party can, by giving the proper notice, insist on having a jury, and it is usual to do so.

The Defences to an Action for Libel.

The defendant in a contested action for libel has several courses open to him when he puts in his defence. He may deny that the words alleged are libellous, or that he published them, or that he published them maliciously or in the defamatory sense imputed, or that the publication of the libel caused the damage complained of. Further, he may, if so advised, plead in the alternative, or as his only plea, that the defamatory words are true in substance and in fact. This is called a plea of justification, and it should never be pleaded unless there is a strong probability of its being sustained by the evidence, for an unproved plea of justifi-

cation is a ground for increasing the damages. Then he may plead "privilege"; that is, that the defamatory words were published under such circumstances that the defendant is not responsible for damage resulting from the publication (see page 136). Again, he may pay a sum of money into Court and plead that that is enough to compensate the plaintiff, and if the jury think it is, the defendant will get a verdict. With the exception shortly to be noticed, any of these pleas may be pleaded together or alternatively, and if any one of them is sustained the defendant wins the case. The exception is that a defendant in an action for libel or slander is not now allowed to deny his liability and at the same time, as an alternative, pay money into Court.⁴⁹

A special plea is allowed by Lord Campbell's Act⁵⁰ in the case of newspaper libels, namely, that the libel was inserted in the newspaper without malice or gross negligence, and that at the earliest opportunity an apology for it has been inserted or offered to be inserted. The following are the words of the section: "And be it enacted that in an action for a libel contained in any public newspaper or other periodical publication, it shall be competent to the defendant to plead that such libel was inserted in such newspaper or other periodical publication without actual malice, and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in such newspaper or other periodical publication a full apology for the said libel, or, if the newspaper or periodical publication in which the said libel appeared should be ordinarily published at intervals exceeding one week, had offered to publish the said apology in any newspaper or periodical publication to be selected by the plaintiff in such action; and that every such defendant shall upon filing such plea be at liberty to

⁴⁹ Rules of the Supreme Court, 1883, Ord. xxii., r. 1.

⁵⁰ 6 and 7 Vict., c. 96, s. 2.

pay into Court a sum of money by way of amends for the injury sustained by the publication of such libel, and such payment into Court shall be of the same effect and be available in the same manner and to the same extent, and be subject to the same rules and regulations as to payment of costs and the form of pleading, except so far as regards the pleading of the additional facts hereinbefore required to be pleaded by such defendant, as if actions for libel had not been excepted from the personal actions in which it is lawful to pay money into Court under an Act passed in the session of Parliament held in the fourth year of his late Majesty, intituled 'An Act for the further amendment of the law and the better advancement of justice'; and that to such plea to such action it shall be competent to the plaintiff to reply generally, denying the whole of such plea."

It was held in *O'Brien v. Clement*,⁵¹ that this plea would not be allowed with one denying liability. But payment of a sum of money into Court under this plea is not to be taken by the jury as an admission of liability in damages to at least that amount.⁵²

By the same statute, a somewhat similar protection is afforded in the case of slanders and libels not published in newspapers. Section 1 provides: "That in any action for defamation it shall be lawful for the defendant (after notice in writing of his intention so to do, duly given to the plaintiff at the time of filing or delivering the plea in such action) to give in evidence, in mitigation of damages, that he made or offered an apology to the plaintiff for such defamation before the commencement of the action, or as soon afterwards as he had an opportunity of doing so, in case the action shall have been commenced before there was an opportunity of making or offering such apology."

⁵¹ (1846) 15 M. and W. 435.

⁵² *Jones v. Mackie* (1867), L. R. 3 Ex. 1; 37 L. J. Ex. 1. Where the libel has been inserted in two papers belonging to the defendant, is not enough to insert the apology in one of them only.

The Damages.

In libel cases the amount of the damages depends upon the circumstances. It is the jury's province to assess the amount, and their decision in the matter will never be interfered with unless they have manifestly erred, and erred considerably, in which case a new trial will be directed. The jury must consider the injury done to the plaintiff and the circumstances in which the libel was published. If they find there was express malice on the part of the defendant they will naturally award more than if he was guilty of mere negligence. If he has done his best to atone for the injury he will be treated more leniently than if he has persisted in the charge. A plea of justification may be taken into consideration as evidence of malice to heighten the damage,⁵³ and even the language of counsel in court, if instructed to persist in the charge, may aggravate the damages.⁵⁴ Either party may, with a view to the damages, give evidence to prove or disprove the existence of a malicious motive for the publication of the defamatory matter,⁵⁵ as the presence or absence of such a motive will enhance or reduce the damages.

To show malice a plaintiff may adduce evidence that the defendant knew the defamatory matter was false, that he had caused it to be gratuitously circulated, or that he had published it in an unusual way. So, too, anything connected with the libel which discloses a course of conduct adverse to the plaintiff may be given in evidence to enhance damages. Thus letters or other copies of the same newspaper, whether published before the libel complained of or afterwards, and even if published after the action is brought, may be made evidence for this purpose.⁵⁶ And

Simpson v. Robinson (1848), 12 Q. B. 511; 18 L. J. Q. B. 73.

⁵⁴ *Ib.* and *Derby v. Ouseley* (1856), 25 L. J. Ex. 230; and *Risk Allah Bey v. Whitehurst* (1868), 18 L. T. N. S. 615.

⁵⁵ *Gathercole v. Miall* (1846), 15 M. & W. 319.

⁵⁶ *Simpson v. Robinson* (1848), 12 Q. B. 511; *Barrett v. Long* (1851), 3 H. L. Cas. 395; *Macleod v. Wakley* (1828), 3 C. and P. 311.

persistence in an accusation made, or refusal to apologise, may be shown for the like purpose. But a plaintiff cannot give evidence of his good character until the defendant has adduced evidence to impeach it.⁵⁷

In mitigation of damages the defendant may prove provocation on the part of the plaintiff, *e.g.*, that the plaintiff had libelled the defendant;⁵⁸ he may also prove facts tending to justify the libel, though not amounting to a complete justification of it.⁵⁹ He may show, too, that he did not originate the libel, *e.g.*, that he copied it from some other newspaper,⁶⁰ though if he have put it forward as new and original matter of his own this will not avail him; or that the matter was published through inadvertence, or the incompetence, not then known, of some person in his employ.⁶¹ But a defendant in a case of newspaper libel cannot give in evidence in mitigation of damages the fact that the plaintiff has already recovered damages from another newspaper proprietor for the same libel.⁶²

Whether evidence of the plaintiff's general bad character can be given by the defendant is a moot question. The balance of opinion seems to be that it can.⁶³

Where an apology and amends have been made or tendered, the fact should be taken into account in assessing the damages. As to the statutory provision for pleading apology and payment into court, see *ante*, pages 167 and 168.

When the matter complained of is defamatory in itself

⁵⁷ *Cornwall v. Richardson* (1825), Ry. and M. 305.

⁵⁸ *Kelly v. Sherlock* (1865), L. R. 1 Q. B. 686; 35 L. J. Q. B. 209.

⁵⁹ *Chalmers v. Shackell* (1831), 6 C. and P. 475; *Speck v. Phillips* (1839), 5 M. and W. 279.

⁶⁰ *Bennett v. Bennett* (1834), 6 C. and P. 588. *Mullett v. Hulton* (1803), 4 Esp. 248. *Saunders v. Mills* (1829), 6 Bing. 213. *Davis v. Cutbush* (1859), 1 F. and F. 487. *Creery v. Carr* (1835), 7 C. and P. 64.

⁶¹ *Smith v. Scott* (1847), 2 C. and K. 580.

⁶² *Creery v. Carr* (1835), 7 C. and P. 64.

⁶³ See Taylor on Evidence, 4th edition, ss. 354, *et seq.* Mayne on Damages, 4th edition, p. 457.

the plaintiff need not give evidence of having sustained actual damage, and the jury may give substantial damages, for loss is the natural result of injury to character, and they may take into consideration not only the injury that has arisen, but that which may arise from the defamation.⁶⁴ Where the words complained of are not actionable without special damage, the actual damage sustained must be alleged in the pleadings and proved at the trial. But where they are actionable in themselves no evidence of any specific loss sustained in consequence of them may be given unless that specific loss is laid in the statement of claim,⁶⁵ and special damage, which is the result of a repetition of the libel, and not of the defendant's publication of it, cannot be recovered from the defendant.⁶⁶

Where the defendant does not by his defence assert the truth of the statement complained of, he is not entitled on the trial to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the libel was published, or as to the character of the plaintiff, without the leave of the judge, unless seven days at least before the trial he furnishes particulars to the plaintiff of the matters about which he intends to give evidence.⁶⁷

The Costs.

Where the action is tried without a jury the costs are in the discretion of the judge, and if he makes no order each party has to bear his own costs. He may order the unsuccessful party to pay all or part only of his opponent's costs, but he cannot make a successful party pay the costs of the action to the other side.⁶⁸ When the action is tried with a jury the costs follow the event unless for good cause

⁶⁴ *Ingram v. Lawson* (1840), 6 Bing. N. C. 212.

⁶⁵ See Mayne on Damages, 4th edition, p. 452.

⁶⁶ *Ward v. Weeks* (1830), 7 Bing. 211, Mayne on Damages.

⁶⁷ R. S. C. 1883, Ord. xxxvi., r. 37.

⁶⁸ R. S. C. 1883, Ord. lxv., r. 1.

the judge otherwise orders.⁶⁹ Where the jury return a verdict for the plaintiff, damages one farthing, the defendant has to pay the costs of the action, unless the judge, for good cause, otherwise orders.⁷⁰

Injunction.

After a jury has decided that certain statements are libellous, the Court can and will restrain further publication of them by its injunction.⁷¹ Whether before the case has been tried the Court will issue an interlocutory injunction is not quite clear. Before the Judicature Acts, 1873, it was held that there was no power to do so, but since that Act the Court of Appeal has declared that there is jurisdiction to do so,⁷² and it has been done in a few cases⁷³ where the libels were damaging property, or a business, or a friendly society or joint stock company, but up to now⁷⁴ there is no reported case of an interlocutory injunction being granted to restrain libels on personal character, and in one case when such an injunction was asked for it was refused.⁷⁵

Criminal Proceedings for Libel.

Libel can be punished criminally in two ways: 1, By indictment; 2, By criminal information.

⁶⁹ R. S. C. 1883, Ord. lxv., r. 1. As to what is "good cause," see *Jones v. Curling* (1885), 13 Q. B. D. 262; 53 L. J. Q. B. 373, and *Hughes v. Merritt* (1876), 17 Q. B. D. 373, where Lord Coleridge deprived of costs a plaintiff who recovered only a farthing damages for libel.

⁷⁰ *Gurnet v. Bradley* (1878), 3 App. Cas. 944; 48 L. J. Ex. 186.

⁷¹ *Suxby v. Easterbrook* (1878), 3 C. P. D. 339.

⁷² *Quartz Hill, &c., Mining Co. v. Beall* (1882), 20 Ch. D. 501, 51 L. J. Ch. 874.

⁷³ *Thorley's Cattle Food Co. v. Massam* (1877), 6 Ch. D. 582; 46 L. J. Ch. 713. *Hill v. Hart Davies* (1882), 21 Ch. D. 798; 51 L. J. Ch. 845. *Hayward and Co. v. Hayward and Sons* (1886), 34 Ch. D. 198.

⁷⁴ 1887.

⁷⁵ *Armstrong v. Armit* (1886), 2 Times Law Reports, 887.

In proceeding by indictment the defendant is first summoned to appear before justices or a stipendiary magistrate, and if a case is made out the accused is committed for trial, or if the Court declines to commit for trial the prosecutor can elect to be bound over in recognisances to prefer an indictment. In either case an indictment is preferred setting out *in extenso* the defamatory words, and where they are not in themselves clearly defamatory charging a libellous meaning by *innuendo*. The indictment is preferred to the grand jury at the Central Criminal Court or the Assizes, and they, after investigation, return "a true bill" or "no true bill." In the event of a true bill being returned the trial in the ordinary course takes place before a judge and jury of twelve, at the Old Bailey or the Assizes, as the case may be. But if the case is of importance, or there be other sufficient reason, it is open for either side to apply to the Queen's Bench for a *certiorari* to have the indictment, in the event of the grand jury returning a true bill, removed into the High Court of Justice for trial, and if the Court, after reading affidavits and hearing arguments on both sides, makes the order asked for, it will be so removed, and in such event it is possible to have it tried by a special jury, which otherwise is not available.

The defendant pleads to the indictment either "guilty" or "not guilty," and if the latter he can plead a justification, *i.e.*, that the words are true in substance and in fact, and that it is for the public benefit that they were published.⁷⁶ The plea of justification must be in writing, and must set forth the particular fact or facts by reason whereof it was for the public benefit that the matters charged should be published, and if there is no plea of justification the truth of the statement is not to be inquired into.⁷⁷ The plea of "not guilty" puts the prosecution to the proof of all matters necessary to procure a

⁷⁶ 6 and 7 Vict., c. 96, s. 6. See also *ante*, page 135.

⁷⁷ *Ibid.*

conviction, viz., that the words complained of are libellous, and that the defendant published them, or caused them to be published, while the defendant is at liberty to show that the publication was privileged.

The trial of a criminal prosecution for libel is like that of an action for the same with the exception that the defendant cannot give evidence, and that every matter necessary to be proved must be proved strictly, no admissions, to save such proof, being possible.

The punishment for libel is fine or imprisonment, or both, and the offender may be required to find sureties to keep the peace :—

- a. If the defendant be convicted of simply publishing the libel, the maximum punishment is one year's imprisonment (without hard labour) and the payment of such a fine as the Court may impose.⁷⁸
- b. If he be convicted of publishing the libel knowing it to be false, the maximum punishment is two years' imprisonment and the payment of such a fine as the Court may impose.⁷⁹
- c. If he be convicted of "blackmailing," i.e., of publishing or threatening to publish any libel, or directly or indirectly proposing to abstain from or offering to prevent the printing or publishing of any matter or thing touching any person with intent to extort money or security for money, or any valuable thing from such or any other person, or to induce any person to confer or procure for any person any appointment or office of profit or trust, the maximum punishment is three years' imprisonment with hard labour.⁸⁰

The amount of the fine is entirely in the discretion of the Court, so long as it is not "excessive" within the meaning of Magna Charta.

⁷⁸ 6 and 7 Vict., c. 96, s. 5.

⁷⁹ Sect. 4.

⁸⁰ Sect. 3.

The trial is conclusive, except it be instituted in or removed into the High Court (Queen's Bench Division), when, under certain circumstances, a new trial may be obtained.

Criminal proceedings for newspaper libels are regulated by the *Newspaper Libel and Registration Act*, 1881 (44 and 45 Vict., c. 60), which provides—1, That no criminal prosecution for newspaper libel shall be instituted until the fiat of the Attorney-General or Director of Public Prosecutions has been obtained; 2, That courts of summary jurisdiction may in cases of newspaper libel inquire whether the libel was true or for the public benefit, and deal with them accordingly; and 3, That such courts may, with the consent of the defendant, deal summarily with cases where the libels appear trivial.

The sections of the Act which deal with these matters are as follows :—

SECTION 3.—“No criminal prosecution⁸¹ shall be commenced against any proprietor, publisher, editor, or any person responsible for the publication of a newspaper⁸² for any libel published therein, without the written fiat or allowance of the Director of Public Prosecutions in England, or Her Majesty's Attorney-General in Ireland being first had and obtained.”

SECTION 4.—“A court of summary jurisdiction, upon the hearing of a charge against a proprietor, publisher, or editor, or any person responsible for the publication of a newspaper, for a libel published therein, may receive evidence as to the publication being for the public benefit, and as to the matters charged in the libel being true, and as to the report being fair and accurate, and published without malice, and as to any matter which under this or

⁸¹ A criminal information for libel is not a criminal prosecution within this section. *Yates v. The Queen* (1885), 14 Q. B. D. 648; 54 L. J. Q. B. 258.

⁸² For the definition of a “newspaper” for the purposes of this Act, see *ante*, page 144.

any other Act, or otherwise, might be given in evidence by way of defence by the person charged on his trial on indictment, and the Court, if of opinion after hearing such evidence that there is a strong or probable presumption that the jury on the trial would acquit the person charged, may dismiss the case."

SECTION 5.—"If a court of summary jurisdiction, upon the hearing of a charge against a proprietor, publisher, editor, or any person responsible for the publication of a newspaper for a libel published therein, is of opinion that, though the person charged is shown to have been guilty, the libel was of a trivial character, and that the offence may be adequately punished by virtue of the powers of this section, the Court shall cause the charge to be reduced into writing and read to the person charged, and then address a question to him to the following effect, 'Do you desire to be tried by a jury, or do you consent to the case being dealt with summarily?' and if such person assents to the case being dealt with summarily, the Court may summarily convict him, and adjudge him to pay a fine not exceeding fifty pounds."

"Section 27 of the Summary Jurisdiction Act, 1879, shall, so far as is consistent with the tenor thereof, apply to every such proceeding as if it were herein enacted and extended to Ireland, and as if the Summary Jurisdiction Acts were therein referred to instead of the Summary Jurisdiction Act, 1848." ⁸³

SECTION 6.—"Every libel or alleged libel, and every offence under this Act, shall be deemed to be an offence within and subject to the provisions of the Act of the session of the twenty-second and twenty-third years of the reign of Her present Majesty, chapter seventeen, intituled

⁸³ Section 27 of the Summary Jurisdiction Act, 1879 (42 and 43 Vict., c. 49), enacts regulations as to indictable offences authorised to be dealt with summarily.

‘An Act to prevent vexatious indictments for certain misdemeanours.’”⁸⁴

Criminal Informations.

The proceeding by way of criminal information is a more stately way of bringing a libeller before the Court for punishment, and it is only to be resorted to in serious cases. In it the High Court of Justice (Queen’s Bench Division) is “informed” of the libel, and the defendant is thereupon summoned before it to answer. Criminal informations are of two kinds—one where the information is laid by the Attorney-General in virtue of his office, and the other where it is laid by the Master of the Crown Office on the initiative of some person. Where the Attorney-General takes the initiative, he, without any leave, files a written information of the misdemeanour in the Crown Office, and notice of it is given to the defendant, who enters an appearance and pleads to it as to an indictment. The subsequent proceedings are like those in an ordinary trial, save that the Attorney-General may demand that the case be tried at bar, *i.e.*, before three judges.

Where a person other than the Attorney-General desires a criminal information for libel to be laid, he must file affidavits of the facts and instruct counsel to move the Court for a rule calling upon the defendant to show cause why the information should not be filed. On this rule being granted it is served on the defendant, who thereupon files affidavits and instructs counsel to show cause. After argument the Court either discharges the rule *nisi*—*i.e.*, gives judgment for the defendant—or makes it absolute, in which case the prosecutor causes the information to be filed

⁸⁴ The effect of this is that no indictment for libel can be preferred before a grand jury until the case has first been investigated in a police court or before justices of the peace, and the accused has been committed for trial, or the prosecutor has been bound over to prefer such indictment.

at the Crown Office. To this the defendant appears and pleads, and then the case is tried at the Royal Courts in London, with a special jury if so desired.

The Court has lately laid it down⁸⁵ that it will not grant a criminal information for libel except where the applicant holds some public office or position.

⁸⁵ In *Reg. v. Labouchere* (1884), 12 Q. B. D. 320, 53 L. J. Q. B. 362.

CHAPTER XII.

LIBEL ON PROPERTY AND SLANDER OF TITLE.

THOUGH in strictness a thing cannot be libelled, an action will lie for an unlawful depreciation of a person's property, and for what is called "slander of title." Thus, if an owner puts up property for sale by auction and another person goes to the sale and maliciously asserts that the property is his, or that the owner has a less interest in it than that he is offering for sale, an action for damages may be brought.⁸⁶

In order to maintain such an action it is necessary to prove that the words uttered are false, that special damage has resulted from them, and that they were uttered in bad faith.⁸⁷ "The bona fides of the communication, and not whether a man of rational understanding would have made it, is the question to be canvassed."⁸⁸

To publish of a tradesman falsely and without lawful occasion that the goods in which he trades are inferior in quality to goods in which his rivals trade, is actionable if special damage results.⁸⁹

Thus, where defendants, makers of artificial manures, sent some of their own and plaintiffs' goods to an analyst, and published his report, in which the plaintiffs' goods were said to be much inferior to defendants', it was held that an action would lie if the analyst's report was false, and the plaintiffs could show loss resulting from it.⁹⁰

And where a business circular or advertisement contains

⁸⁶ See Comyn's Digest, Action on Case for Defamation (Slander of Title); Addison on Torts; Odgers on Libel.

⁸⁷ *Brook v. Rowle* (1849), 4 Exch. 524; 19 L. J. Ex. 114.

⁸⁸ Per Lord Ellenborough in *Pitt v. Donovan* (1813), 1 M. & S. 648.

⁸⁹ *Western Counties Manure Co. v. Lawes' Chemical Manure Co.* (1874), L. R. 9 Ex. 218; 43 L. J. Ex. 171.

⁹⁰ *Thorley's Cattle Food Co. v. Massam* (1880), 14 Ch. D. 763; 49 L. J. Ch.

statements depreciating the goods of a rival which are untrue and calculated to injure his trade, or statements concerning an action against a rival which are untrue and calculated to injure his trade, the Court will grant an injunction against the continued issue of such statements. It is not necessary in order to get an injunction to show that actual damage has resulted from the publication of the statements,⁹¹ and if the falsity of the statements can be shown, and the Court can see that they are calculated to injure the plaintiff, an interlocutory injunction will be granted, *i.e.*, an injunction pending the hearing of the action.⁹²

Similar rules apply to circulars, &c., sent to a rival's customers alleging infringement of patent or trade mark, and threatening legal proceedings if they continue to sell such rival's goods. To get an injunction the party complaining must prove that the defendant's statements are false, that they are calculated to injure the plaintiff's trade, and that they have been issued without good faith,⁹³ and if damages are to be obtained it should be shown also that actual damage has resulted from them.

The following enactment in the Patents, Designs, and Trade Marks Act, 1883 (46 & 47 Vict., c. 57), provides for cases like those just above mentioned: "Sect. 32. Where any person claiming to be the patentee of an invention, by circulars, advertisements, or otherwise, threatens any other person with any legal proceedings or liability in respect of any alleged manufacture, use, sale, or purchase of the invention, any person or persons aggrieved thereby may bring an action against him, and may obtain an injunction

⁹¹ *Thomas v. Williams* (1880), 14 Ch. D. 864; 49 L. J. Ch. 605. *Hayward and Co. v. Hayward and Sons* (1886), 34 Ch. D. 198.

⁹² *Halsey v. Brotherhood* (1881), 19 Ch. D. 386; 51 L. J. Ch. 233. *Anderson v. Liebig's Extract of Meat Co.* (1882), 45 L. T. 757. *Hayward and Co. v. Hayward and Sons*, *ubi sup.*

⁹³ *Ibid.*; *Burnett v. Tak* (1882), 45 L. T. 743.

against the continuance of such threats, and may recover such damage (if any) as may have been sustained thereby, if the alleged manufacture, use, sale, or purchase to which the threats related was not in fact an infringement of any legal rights of the person making such threats: Provided that this section shall not apply if the person making such threats with due diligence commences and prosecutes an action for infringement of his patent."

A printer or newspaper proprietor need not fear much to print or publish any circular or advertisement reflecting on goods (not involving the character of the maker or owner of such goods) or threatening proceedings in case of imitation or infringement, if he acts in good faith in the matter, and the name and address of the person issuing the circular or advertisement appear upon it. The writer knows of no case in which a printer or newspaper proprietor has been made, or even sought to be made, liable in such circumstances.

CHAPTER XIII.

BLASPHEMOUS, SEDITIOUS, AND OBSCENE LIBELS.

ANY one who publishes a blasphemous, seditious, or obscene document is guilty of a misdemeanour, and is liable to fine and imprisonment in the discretion of the Court.

It is hard to define blasphemy in these days. In 1857 it was laid down to be the uttering of words or matter relating to God, Jesus Christ, the Bible, or the Book of Common Prayer, *intended* to wound the feelings of mankind or to excite contempt and hatred against the Church by law established, or to promote immorality. The intention seems the gist of the offence, and the fact that the words or matter are calculated or even likely to wound, &c., is not sufficient.⁹⁴

A seditious libel is a libel⁹⁵ published with intent to bring into hatred or contempt, or to excite disaffection against, the person of the Sovereign, or the Government and Constitution of the United Kingdom as by law established, or either House of Parliament, or the administration of justice, or to excite the Queen's subjects to attempt, otherwise than by lawful means, the alteration of any matter in Church or State by law established, or to raise discontent or disaffection amongst the Queen's subjects, or to promote feelings of ill-will and hostility between different classes of such subjects.⁹⁶

"Intent" here has a different meaning from that attached to the word in the preceding paragraph; it has indeed the usual legal meaning, and by law every person is generally deemed to intend the consequences which would naturally follow from his conduct at the time and in the circumstances in which he conducts himself.

⁹⁴ See Stephen's Digest of the Criminal Law, Art. 161.

⁹⁵ For definition of libel, see page 132.

⁹⁶ See Stephen's Digest of the Criminal Law, Art. 56.

The expression "obscene libel" covers an obscene or indecent book, paper, print, writing, picture, drawing, photograph, and the like.

The publication of indecent matter is sometimes justifiable, but unless justified is a misdemeanour. It does not cease to be an offence because the person publishing it is actuated by honest motives.⁹⁷

It is difficult to lay down a precise definition of obscenity, but in *Reg. v. Hicklin* Lord Chief Justice Cockburn said: "I think the test of obscenity is this, Whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall;" and this is generally conceived to be the true test.

It is still more difficult to say under what circumstance the publication of obscene matter is justifiable. Many of the classics contain matter which, if inserted in a book or newspaper published for the first time to-day, would constitute the publication an offence, and yet no one thinks of prosecuting the publishers of such classics; and so with pictures and sculptures. The matter is discussed by Mr. Justice Stephen in his *Digest of the Criminal Law*,⁹⁸ and while he admits he is not able to explain satisfactorily the anomalies above referred to, he submits the following as the conclusion of his researches and arguments: "A person is justified in publishing obscene books, papers, writings, prints, pictures, drawings, or other representations if their publication is for the public good, as being necessary or advantageous to religion or morality, to the administration of justice, the pursuit of science, literature, or art, or other objects of general interest; but the justification ceases if the publication is made in such a manner, to such an extent, or under such circumstances as to exceed

⁹⁷ *Reg. v. Hicklin* (1868), L. R. 3 Q. B. 360; 37 L. J. M. C. 89.

⁹⁸ Art. 172 and note thereto and Note xi.

what the public good requires in regard to the particular matter published." It is quite certain, for instance, that many passages and illustrations in medical and surgical works, which are necessarily lawful when confined to such works, would be unlawful if circulated broadcast among the people.

A person convicted of publishing an obscene libel may be sentenced to hard labour.⁹³

If a full report of judicial proceedings would contain obscene matter, the obscene matter must be omitted, or the publisher will commit an offence.¹

Under Lord Campbell's Act of 1857, for the suppression of obscene publications,² any person may go before a magistrate or two justices of the peace and swear that he has reason to believe, and does believe, that obscene publications are kept in a place within the magistrate's jurisdiction for the purpose of sale or distribution, exhibition for purposes of gain, lending upon hire, or being otherwise published for purposes of gain, and that one or more articles of the kind have been sold, &c., at or in connection with such place, and thereupon the magistrate or justices, being satisfied that the complainant's belief is well founded, and being also satisfied that any of such articles so kept for any of the purposes aforesaid are of such a character and description that the publication of them would be a misdemeanour and proper to be prosecuted as such, give authority by special warrant to any police officer to enter such place and search for and seize all such books, papers, &c., found there, and to carry them before the magistrate or justices, who shall thereupon issue a summons calling upon the occupier of the place to appear within seven days before the magistrate's court to show cause why the articles so seized should not be destroyed,

⁹³ 14 and 15 Vict., c. 100, s. 29.

¹ *Steele v. Brannan* (1872), L. R. 7 C. P. 261; 41 L. J. M. C. 85.

² 20 and 21 Vict., c. 83, s. 1.

and if the party summoned does not appear, or if he appears and the magistrate or justices are satisfied that such articles or any of them are of the character stated in the warrant, and have been kept for the purposes aforesaid, he or they are to order them to be destroyed at the expiration of the time allowed for appealing, and in the meantime to order them to be impounded.³

An appeal to quarter sessions may be lodged within seven days of the order of the magistrate on entering into recognizances to pay costs, &c.⁴

³ As to the form of the order, see *Exp. Bradlaugh* (1878), 3 Q. B. D. 509; 47 L. J. M. C. 107. The death of the complainant does not cause the proceedings to lapse, *Reg. v. Truelove* (1880), 5 Q. B. D. 336.

⁴ Sect. 4 of the Act.

CHAPTER XIV.

COPYRIGHT.

COPYRIGHT is, like Libel, a subject which has been discussed at considerable length in books specially devoted to it.⁴ The intention here is to deal with it, not exhaustively, but in a manner sufficient for all the ordinary needs of those for whom this work is written.

Copyright is almost entirely the creature of Statute Law, and the Acts of Parliament now in force relating to it are twenty in number.⁵ The chief Act concerning books is that of 1842 (5 and 6 Vict., c. 45).

⁴ See Copinger on Copyright, and Shortt's Law of Literature and Art (each 30s.); also see the Digest of the Law of Copyright, by Sir James Stephen, appended to the Report of the Royal Commission on Copyright, 1878 (Eyre and Spottiswoode, 1s.).

⁵ The Acts are: (1) *Books, Lectures, Music, &c.*, 15 Geo. III., c. 53 (Perpetual Copyright of Universities in Books bequeathed to them); 5 and 6 Will. IV., c. 65 (Lectures); 5 and 6 Vict., c. 45 (Term and Register of Copyright—Delivery of Books to Libraries—Remedy for Piracy, &c.). (2) *Works of Art*, 8 Geo. II., c. 13 (Term of Copyright—Remedy for Piracy); 7 Geo. III., c. 38 (Amendment of above Act); 17 Geo. III., c. 57 (Further Amendment); 54 Geo. III., c. 56 (Busts and Sculptures); 6 and 7 Will. IV., c. 59 (Further Amendment of 8 Geo. II., c. 13); 25 and 26 Vict., c. 68 (Paintings, Drawings, and Photographs). (3) *Drama*, 3 and 4 Will. IV., c. 15 (Right of Author to Representation). (4) *Designs*, 5 and 6 Vict., c. 100 (Terms of Copyright—Registration—Remedy for Piracy, &c.); 6 and 7 Vict., c. 65 (Register of Designs, &c.); 13 and 14 Vict., c. 104 (Provisional Registration, &c.); 21 and 22 Vict., c. 70 (Further as to Registration—Jurisdiction of County Courts); 24 and 25 Vict., c. 73 (Extension of Acts to Works done Abroad); 38 and 39 Vict., c. 93 (Transfer to Patent Commissioners of Powers of Board of Trade). (5) *International*, 7 Vict., c. 12 (Reciprocal Copyright, &c.); 10 and 11 Vict., c. 95 (Protection in the Colonies); 15 Vict., c. 12 (Unauthorised Translations, &c.); 38 Vict., c. 12 (Exemption of Dramatic Pieces); 49 and 50 Vict., c. 33 (Amending Act).

The law is not wholly satisfactory, and in 1878 a Royal Commission proposed various alterations in it. Since that date a Bill to consolidate and amend it has been introduced into Parliament almost every Session, but has not yet been passed.

Copyright Defined.—Copyright is the exclusive right of multiplying copies of an original work or composition, and consequently preventing others from doing so.⁶

What may be the Subject of Copyright.—All literary compositions, including speeches or lectures, musical compositions, dramatic compositions, sculpture, paintings, photographs, engravings, and the like, may be the subject of copyright. There must be some amount of originality about the work, or there can be no copyright in it. Thus there can be no copyright in a mere copy or extract, but a new arrangement of old matter is the subject of copyright, and so is a new compilation, or a new treatment of old matter, or of matter open to any one, such as a chronological table, a map, a court calendar, a road book, a directory,⁷ an epitome, a law digest, a selection from poets, a translation, and it has even been held that where a person simply makes corrections in and additions to a work in which he had originally no interest, he acquires a copyright in them and may bring an action if they are pirated.⁸

There can be no copyright in anything which is immoral, irreligious, seditious, or libellous;⁹ nor in anything which

⁶ Per Lord St. Leonards in *Jefferys v. Boosey* (1854), 4 H. L. C. 815; 24 L. J. Ex. 81; also 5 and 6 Vict., c. 45, s. 2.

⁷ In this, and the examples immediately preceding, it is only in the individual work that there can be copyright, for necessarily, if accurate, one map and one directory must convey the same information as another relating to the same part of the world.

⁸ *Carey v. Longman* (1801), 1 East 358. See various authorities for these propositions in Fisher's Digest, title "Copyright (Compilations)."

⁹ *Stockdale v. Onwhyn* (1826), 5 B. & C. 173; *Lawrence v. Smith* (1822), Jacob, 471; see also *Forbes v. Johnes* (1802), 4 Esp. 97.

professes to be what it is not, in such a way as to be a fraud upon purchasers of it.¹⁰

There is no copyright in mere news, or in the mere record of facts; but the re-publication by one Colonial paper of telegrams from Europe procured by another was restrained by the Supreme Court of Melbourne, Victoria.¹¹

There is no copyright in mere ideas or theories,¹² and a person who purposes bringing out a publication under a particular title gains no right by registering the intended title of it.¹³

Having proceeded so far generally, we must now divide the subject.

Copyright in Unpublished Works.

The author or owner of any unpublished literary composition or work of art is entitled to restrain others from publishing it, or any copy of it.¹⁴

If the author or owner publishes it to a certain limited extent, he parts with his right partially only. Thus, if a person gives lectures to pupils, or to persons admitted by ticket, any one present may take down the lectures for his own use, but may not publish them for profit;¹⁵ and where a photographer lent photographs to a friend for a particular purpose, and the friend became bankrupt, it was held that the purchasers of the photographs from his assignees

¹⁰ *Wright v. Tallis* (1845), 1 C. B. 893; 14 L. J. C. P. 283, where the book alleged to have been pirated purported to be the translation of a work by a German author who never wrote any such work. See also *Hogg v. Kirby* (1803), 8 Ves. 226.

¹¹ See Copinger on Copyright, 2nd edn., p. 101. It is doubtful whether this decision would be followed in England.

¹² *Pike v. Nicholas* (1869), L. R. 5 Ch. 251; 39 L. J. Ch. 435.

¹³ *Hogg v. Maxwell* (1867), L. R. 2 Ch. 307; 36 L. J. Ch. 433.

¹⁴ *Prince Albert v. Strange* (1849), 1 Mac. & G. 25; 18 L. J. Ch. 120.

¹⁵ *Abernethy v. Hutchinson* (1848); 1 Hall & Twells 28; *Nichols v. Pitman* (1884), 26 Ch. D. 374; 53 L. J. Ch. 552; *Caird v. Sime* (1886), 13 Ct. of Sess. Ca. 23.

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might not publish copies of them without the consent of the photographer who lent them.¹⁶

The copyright in a letter written by one person and sent to another remains in the writer, but the original letter vests in the person to whom it is addressed and sent, and he may destroy it, or sell, bequeath, or give it away.¹⁷

Copyright in Books, Newspaper Articles, &c.

"Book" is defined by the Copyright Act, 1842 (sect. 2), to mean and include every volume, part or division of a volume, pamphlet, sheet of letterpress, sheet of music, map, chart, or plan separately published.

A newspaper is a "book" within the meaning of the Act,¹⁸ although it was, in one case, held not to be.¹⁹

The face of a barometer displaying special letterpress was held not to be within the definition.²⁰

The wood engravings in a work are covered by the Act, even wood engravings or other illustrations in a trade catalogue. Thus, in *Bogue v. Houlston*,^{20a} where the woodcuts used to illustrate the letterpress had been copied, the plaintiffs were protected. In *Maple v. Junior Army and Navy Stores*,²¹ the plaintiffs had issued an illustrated catalogue of furniture, for which they had had engravings specially made, and the defendants pirated these engravings; it was decided that the engravings were the subject of copyright, notwithstanding that the letterpress in connection with them could not be, and the plaintiffs were

¹⁶ *Mayall v. Higbey* (1862), 1 H. & C. 148; 31 L. J. Ex. 329.

¹⁷ *Gee v. Pritchard* (1819), 2 Swanst. 402.

¹⁸ *Walter v. Hows* (1881), 17 Ch. D. 708; 50 L. J. Ch. 621.

¹⁹ *Cox v. Land and Water Journal Co.* (1869), L. R. 9 Eq. 324; 39 L. J. Ch. 152.

²⁰ *Davis v. Comitti* (1886), 54 L. J. Ch. 419; 52 L. T. 539. See also *Cable v. Marks* (1883, "The Christograph"), 52 L. J. Ch. 197; 47 L. T. 432.

^{20a} (1852), 5 D. G. & Sm. 267; 21 L. J. Ch. 470.

²¹ (1882), 21 Ch. D. 369; 52 L. J. Ch. 67.

held entitled to an injunction restraining the defendants from publishing any catalogue containing illustrations copied from the plaintiffs' books.

Who may obtain Copyright in Books, &c.—To obtain copyright under the Act the author, or other the person in whom it first vests, must be : 1. A subject of the British Crown, natural born or naturalised ; or 2. A foreigner who at the time of the publication is resident in some part of the British Dominions ;²² or (possibly) 3. An alien friend who, while residing out of the British Dominions, publishes a book in the United Kingdom.²³

Publication Abroad.—If a book is first published in a foreign country, the author can gain no copyright in the United Kingdom save under the International Copyright Acts.²⁴ But simultaneous publication here and abroad confers copyright.²⁵

The Copyright Act extends to all the British Dominions,²⁶ but the Law Lords in *Routledge v. Low*²⁷ said that to obtain copyright under the Act the first publication must be in the United Kingdom. The point has now been settled otherwise by statute, and all the Copyright Acts are applied to the Colonies with slight modifications.²⁸

Copyright in Title.—There is no copyright in the title of a book or newspaper unless it conveys an original idea, but there is vested in the proprietor a right analogous to that of trade mark or trade name. So that if A.'s book or

²² *Routledge v. Low* (1868), L. R. 3 H. L. 100 ; 37 L. J. 454.

²³ Per Lords Westbury and Cairns in *Routledge v. Low*. See *Buxton v. James* (1851), 5 D. G. and S. 80.

²⁴ 7 and 8 Vict., c. 12, s. 19, see *post*, title "International Copyright."

²⁵ *Cocks v. Purday* (1848), 5 C. B. 860 ; 2 C. & K. 269. *Buxton v. James* (1851), 5 D. G. and S. 80 ; 49 and 50 Vict., c. 33, s. 3.

²⁶ 5 and 6 Vict., c. 45, s. 29.

²⁷ *Ubi supra*.

²⁸ 49 and 50 Vict., c. 33, s. 8.

newspaper has become known to the public under a certain title, and B. publishes a book or newspaper with a title so similar that it is calculated to deceive the public into a belief that B.'s book is A.'s, A. may restrain B. from using such title.²⁹

The right is capable of assignment.³⁰

Duration of Copyright.—When the “book” is published in the author's lifetime, the copyright endures for the author's life and seven years after, or for 42 years from the date of first publication, whichever is longest.

When the book is published after the author's death, the copyright endures for the term of 42 years from the first publication.³¹

In Whom Vested.—When the “book” is published in the author's lifetime, the copyright is in the author or his assigns. When it is published after his death, it is in the proprietor of the author's manuscript from which the book is first published and his assigns.³²

If one person employs and pays³³ another to write a “book” on the terms that the copyright therein shall belong to the employer, the employer has the same copyright therein as if he had been the author.³⁴

The copyright in an article, essay, or other portion, written for a newspaper, review, magazine, encyclopædia, periodical work, or work published in parts, belongs to the

²⁹ See also *infra*, Chapter XV.; *Dicks v. Yates* (1881, “Splendid Misery”), 18 Ch. D. 76 (C. A.). See also *Maxwell v. Hogg* (1867, “Belgravia” Magazine), L. R. 2 Ch. 307; 36 L. J. Ch. 433; *Weldon v. Dicks* (1878, “Trial and Triumph”), 10 Ch. D. 247; *Schoore v. Schmincke* (1886, “The Castle Album”), 33 Ch. D. 546; *Walter v. Emmott* (1885, “The Morning Mail”), 54 L. J. Ch. 1059.

³⁰ *Kelly v. Hutton* (1868, “Sporting Life”), L. R. 3 Ch. 703; 37 L. J. Ch. 297.

³¹ 5 and 6 Vict., c. 45, s. 3.

³² *Ibid.*

³³ Actual payment is necessary, agreement to pay is not enough. *Brown v. Cooke* (1846), 16 L. J. Ch. 140.

³⁴ 5 and 6 Vict., c. 45, s. 18, as stated by Stephen J.

writer of such article, essay, &c., unless he was employed and paid³⁵ to write it on the terms that the copyright in it should belong to the employer, in which case it does belong to the employer exclusively³⁶; or unless he was employed and paid³⁷ to write it on the terms that the copyright in the newspaper, review, &c.,³⁸ should belong to the publisher or proprietor thereof, in which case the copyright in the article, essay, &c., belongs to such publisher or proprietor, with these reservations:—

1. After 28 years from the first publication, the right of publishing the article, essay, &c., in a separate form reverts to the author for the remainder of the term (*i.e.*, the remainder of the author's life plus 7 years, or of the 42 years).

2. During the 28 years the said publisher or proprietor may not publish the article, essay, &c., separately or singly without the consent of the author or his assignees.³⁹

But the author of the article, essay, &c., may by contract (expressed or implied) with the publisher or proprietor of the newspaper, &c., reserve to himself the right of publishing the article, essay, &c., in a separate form, and if he does so he has the copyright in the separate publication

³⁵ *Bishop of Hereford v. Griffin* (1848), 16 Sim. 190; 17 L. J. Ch. 210.

³⁶ In *Platt v. Walter* (1867), 17 L. T. 157, it was said that it was open to doubt if the section of the Act relating to reviews, magazines, periodical works, &c., included newspapers, because they were not specifically mentioned, but it is conceived that it does.

³⁷ Actual payment is necessary. *Richardson v. Gilbert* (1851), 1 Sim. N. S. 336; 20 L. J. Ch. 553.

³⁸ 5 and 6 Vict., c. 45, s. 18, as construed in *Brown v. Cook*: (1846), 16 L. J. Ch. 140.

³⁹ 5 and 6 Vict., c. 45, s. 18. The proprietor or publisher cannot evade this provision by republishing the article in question with others, new or old; he can only reprint entire the number of his newspaper, &c., which originally contained such article. *Smith v. Johnson* (1863), 4 Giff. 632; 33 L. J. Ch. 137. The author may get an injunction without registering at Stationers' Hall. *Mayhew v. Maxwell* (1860), 1 J. and H. 312.

for the full term, dating from the first appearance of the separate publication, but still without prejudice to the right of the said publisher or proprietor to publish the same as part of his newspaper, &c.

Where the proprietor of a magazine employed and paid an editor, and the editor employed and paid persons to write articles, it was thought by Vice-Chancellor Shadwell⁴⁰ that the proprietor of the magazine had no copyright in the articles, the Statute not providing for this case.

In the case of *Walter v. Howe*,⁴¹ the proprietors of the *Times* had employed and paid a man to write for them a memoir of Disraeli, which was published in their paper, and the defendant subsequently publishing a reprint of it, they brought an action to restrain him. They failed on two grounds, one of which was that they did not show that the terms between them and the author were that the copyright in the article should be their property, the mere fact of the employment and payment not being sufficient.

In *Sweet v. Benning*,⁴² however, it was held that where the author is employed by the proprietor of a periodical to write for it articles, on certain terms as to price, but without any mention of the copyright, it is to be inferred that the copyright is to belong to the proprietor of the periodical. This case was not referred to in *Walter v. Howe*, but since { that decision it is well for authors and proprietors to have a clear understanding upon the subject of the copyright when they arrange terms.

Assignment of Copyright.—The original owner of a copyright may assign it to another person or persons, and the assignees may, in like manner, assign their interest to others. It has been doubted whether there can be a partial assignment of copyright.⁴³ An assignment of copyright

⁴⁰ In *Brown v. Cooke* (1846), 16 L. J. Ch. 140.

⁴¹ (1881) 17 Ch. D. 708; 50 L. J. Ch. 621.

⁴² (1854), 16 C. B. 459; 24 L. J. C. P. 175.

⁴³ See *Jefferys v. Boosey* (1854), 4 H. L. Cas. 815; 24 L. J. Ex 81; but see 5 and 6 Vict., c. 45, s. 13, cited *infra*.

must be in writing,⁴⁴ but it need not be by deed or by any formal document. In *Kyle v. Jefferys*,⁴⁵ the assignment relied on was a receipt given by the author for a sum of money expressed to be paid for the copyright, and it was held sufficient. So in *Lacy v. Toole*,⁴⁶ the author, in consideration of £10, "agreed to let the plaintiff have" a certain drama, and this was held sufficient assignment. The proprietor of a copyright may also assign "his interest or any portion of his interest" in it by causing an entry to be made of such assignment in the register kept at the hall of the Stationers' Company, London.⁴⁷ The schedule to the Act provides that the entry shall give the following particulars: *a*, the date of entry; *b*, the title of the book, with reference to the page of the registry-book in which the original entry is made; *c*, the names of the assignors; and *d*, the names of the assignees.

In the absence of a special contract to the contrary, the assignor of a copyright is entitled after the assignment to continue selling copies of the work printed by or for him before the assignment and remaining in his possession.⁴⁸

Agreements are commonly made by authors with publishers whereby without assigning the copyright in their books they give the publishers an interest in their production and sale. The relations between authors and publishers will form the subject of a separate chapter.

Copyright is personal property, and on the death of the proprietor it devolves on his legal personal representatives. It is transmissible by bequest.⁴⁹ On bankruptcy it passes to the trustee.⁵⁰

⁴⁴ *Leyland v. Stewart* (1876), 4 Ch. D. 419; 46 L. J. Ch. 103.

⁴⁵ (1859) 3 Macq. H. L. Cas. 611; 18 Ct. of Sess. Cas. 906.

⁴⁶ (1867) 15 L. T. 512.

⁴⁷ 5 and 6 Vict., c. 45, s. 13.

⁴⁸ *Taylor v. Pillow* (1869), L. R. 7 Eq. 418.

⁴⁹ *Ibid.*, s. 25.

⁵⁰ *Mawman v. Tegg* (1826), 2 Russ. 385, 392.

Registration.—A copyright register is, pursuant to the Act of Parliament,⁵¹ kept at Stationers' Hall, London. In it are entered, on payment of a fee of 5s., and on handing in the statutory form properly filled up, particulars of the title of a book, the time of the first publication thereof, the name and place of abode of the publisher, and the name and place of abode of the proprietor of the copyright of the book or of any portion of such copyright.

The register is open to public inspection on payment of a fee of one shilling for each entry searched for or inspected.

A certified copy of any entry can be obtained by any one on payment of five shillings, and such certificates are *prima facie* evidence of the proprietorship or assignment of the copyright.⁵² But such evidence may be rebutted.

Any person aggrieved⁵³ by any entry may apply by motion to a court or judge of the High Court of Justice to have it expunged or varied.⁵⁴

It is a misdemeanour to make, or procure to be made, a false entry in the register, or wilfully to produce in evidence a false copy of any entry.⁵⁵

The statutory form of request to register is as follows :—⁵⁶

I, A. B., of _____, do hereby certify that I am the proprietor of the copyright of a book intituled Y. Z., and I hereby require you to make entry in the register

⁵¹ 5 and 6 Vict., c. 45, s. 11.

⁵² *Ibid.*

⁵³ *I.e.*, any person whose title conflicts with that of the person registered. *Chappell v. Purday* (1843), 12 M. & W. 303; re *Graves* (1869), L. R. 4 Q. B. 715; 20 L. T. 877; *Exp. Hutchings and Romer* (1878), 4 Q. B. D. 90; 48 L. J. Q. B. 29.

⁵⁴ Sect. 14. The person registering may himself apply. *Exp. Poulton* (1884), 53 L. J. Q. B. 320.

⁵⁵ Sect. 12.

⁵⁶ The forms can be purchased at Stationers' Hall.

book of the Stationers' Company of my proprietorship of such copyright according to the particulars under-written.

Title of Book.	Name of Publisher and Place of Publication.	Name and Place of abode of the Proprietor of the Copyright.	Date of First Publication.
Y. Z.		A. B.	

Dated this day of , 18
 Witness, C. D. (Signed) A. B.

With regard to registration, the following points have been decided :—

A forthcoming "book"⁵⁷ cannot be registered. The entry must be made *after* publication.⁵⁸

The day of the first publication must be stated : it is not enough to give the month.⁵⁹ The day given must be correct, or the registration will be bad.⁶⁰

The publisher, whose name and place of abode is to be given, is the *first* publisher of the book.⁶¹

The place of business of the publisher or of the proprietor is a sufficient "place of abode."⁶²

The trade name of the firm of publishers is a sufficient "name."⁶³

The person to be entered as proprietor of the copyright is the person whose the copyright is at the time of registration, and there is no need to state who was the first

⁵⁷ For meaning of "book," see page 189.

⁵⁸ *Marvell v. Hogg* (1867), L. R. 2 Ch. 307; 36 L. J. Ch. 433; *Henderson v. Marvell* (1877), 5 Ch. D. 892; 46 L. J. Ch. 891.

⁵⁹ *Mathieson v. Harrod* (1869), L. R. 7 Eq. 270; 38 L. J. Ch. 139.

⁶⁰ *Page v. Wisden* (1869), 20 L. T. 435; 17 W. R. 483.

⁶¹ *Coote v. Judd* (1883), 23 Ch. D. 727; 53 L. J. Ch. 36.

Lover v. Davidson (1856), 1 C. B. N. S. 182.

⁶³ *Weldon v. Dicks* (1878), 10 Ch. D. 217; 48 L. J. Ch. 201.

proprietor of it, or how it devolved upon the present proprietor.⁶¹

When there are several editions of a book, the original edition must be registered in order to entitle the proprietor to maintain an action for infringement of a subsequent edition, unless (perhaps) such subsequent edition is practically a new work.⁶² "If the book entered (the third edition of the work) had been partly old and partly new, there might have been a compliance with the Act *pro tanto*, but the entry would not have given the plaintiff a copy-right for a fresh period of forty-two years for the part which is old."⁶³

Registration is not compulsory,⁶⁴ nor does the want of it impair the ownership of the copyright; but no action for infringement can be maintained unless there has been a due registration under the Act.⁶⁵ Registration may be duly effected at any time before action (*i.e.*, before the writ is issued), even after the infringement in respect of which it is intended to sue.⁶⁶ To enable an action to be successfully maintained the registration must be perfect in all particulars.⁷⁰

Infringement of Copyright.—It is extremely difficult to define what amounts to an infringement of copyright. It is better to state what has been held to be an infringement and what not, and to leave the reader to frame rules for

⁶¹ *Ibid.*

⁶² *Thomas v. Turner* (1886), 33 Ch. D. 292; 56 L. J. Ch. 56.

⁶³ Per Lindley, L. J., in *Thomas v. Turner*; see also *Murray v. Bogue* (1852), 1 Drew 353.

⁶⁴ 5 and 6 Vict., c. 45, s. 24; *Stevens v. Wildy* (1850), 19 L. J. Ch. 190.

⁶⁵ *Ibid.*

⁶⁶ *Chappell v. Davison* (1856), 18 C. B. 194; 25 L. J. C. P. 225. An hour before writ is enough, *Warne v. Lawrence* (1886), 54 L. T. 371; 34 W. R. 452.

⁷⁰ *Thomas v. Turner* (1886), 33 Ch. D. 292; *Page v. Wisden* (1865), 20 L. T. 435; 17 W. R. 483. But see *Faible v. Boosey* (1879), 4 App. Cas.¹¹ 48 L. J. Ch. 697.

himself from the decisions. Mr. Justice Stephen, however, in his "Digest of the Law of Copyright,"⁷¹ has ventured to lay down the following propositions :—

"The owner of the copyright in a book is not entitled to prevent other persons from publishing the matter contained in it if they invent or collect it independently, nor to prevent them from making a fair use of its contents in the composition of other books.

"The question, what is a fair use of a book, depends upon the circumstances of each particular case ; but the following ways of using a book have been decided to be fair :—

- (a.) Using the information or the ideas contained in it without copying its words or imitating them so as to produce what is substantially a copy.
- (b.) Making extracts (even if they are not acknowledged as such) appearing, under all the circumstances of the case, reasonable in quality, number, and length, regard being had to the object with which the extracts are made, and to the subjects to which they relate.
- (c.) Using one book on a given subject as a guide to authorities afterwards independently consulted by the author of another book on the same subject.
- (d.) Using one book on a given subject for the purpose of checking the results independently arrived at by the author of another book on the same subject.

An abridgment may be an original work if it is produced by a fair use of the original or originals from which it is abridged, but the republication of a considerable part of a book is an infringement of the copyright existing in it, although it may be called an abridgment, and although

⁷¹ Appended to the Report of the Royal Commissioners on Copyright, 1878.

the order in which the republished parts are arranged may be altered."

Let us consider some of the cases on which these statements are founded.

In *Kelly v. Morris*⁷² the parties were rival publishers of London directories. It was held by Vice-Chancellor Wood that the plaintiff, though first in the field, could not prevent the defendant from publishing a similar directory if the latter made an independent collection of the names and addresses, and that if he did this he might refer to the plaintiff's book to check the accuracy of his own; that he might even use that book to inform his canvassers where to call for names, but that he might not take the names and addresses from the plaintiff's book and then send his canvassers to see if they were accurate. Similar rules apply to maps, dictionaries, tables of logarithms, chronological tables, &c.⁷³; and where an author treats of a subject which has been dealt with by another author, he may check his own results by the previous work, and even refer to it to guide him where to go for authorities, provided he does consult such authorities and work upon or from them.⁷⁴

In *Campbell v. Scott*⁷⁵ the plaintiff had published two volumes of poems, and the defendant issued a collection of poems including six of the best of those in the two

⁷² (1866) L. R. 1 Eq. 697 35 L. J. Ch. 423.

⁷³ See *Jarrold v. Houlston* (1857), 3 K. and J. 708; *Morris v. Ashbee* (directory case, 1868), L. R. 7 Eq. 34; *Morris v. Wright* (directory case, 1870), L. R. 5 Ch. 279; *Spiers v. Brown* (dictionary case, 1858), 6 W. R. 352, *Truster v. Murray* (chronology case 1798), 1 East 363 n. *Sayre v. Moore* (map case, 1785), 1 East 361 n. where it was held that no action for piracy would lie where new sea charts had been published on an improved and more useful principle with material corrections, though many of the lines were copied from old charts.

⁷⁴ *Pike v. Nicholas* (1869), L. R. 5 Ch. 251; 39 L. J. Ch. 435 (concerning two books on the descent of the English from the ancient Britons).

⁷⁵ (1842) 11 Sim. 31.

volumes. This was held to be an infringement of copyright. But in *Saunders v. Smith*,⁷⁶ where the plaintiff owned the copyright in many volumes of law reports, and the defendant took some of the cases reported in these volumes and republished them with elaborate notes, an injunction to restrain the publication was refused. Mr. Justice Stephen points out that this case differs from *Campbell v. Scott* inasmuch as there there was no independent labour at all, except copying, whereas here the extracts, though considerable in length and number, were mere texts to an elaborate commentary.

In *Roworth v. Wilkes*⁷⁷ the defendant had taken for an article on fencing in an encyclopædia 75 pages out of a book of 118 pages dealing with the same subject, and belonging to the plaintiff. This was naturally held to be an infringement. And where the plaintiff published a series of law reports with head notes stating the nature of each case and the decision thereon, and the defendant republished the head notes arranged according to their subject-matter as a monthly digest, it was held that there was an infringement of the plaintiff's copyright.⁷⁸ So, too, where the defendant published a book entitled "Napoleon III., from the Popular Caricatures of the last Thirty Years," and, among a number of others, copied nine from *Punch* (the copyright wherein belonged to the plaintiffs), taken from issues extending over some years, it was held that there had been an infringement of the plaintiffs' copyright.⁷⁹

When one author copies from or makes use of the work of another in such a way as to infringe that other's copyright, the fact that he has in his work made full *acknowledgment of the original*, and has had no dishonest intention

⁷⁶ (1833) 3 Myl. & Cr. 711.

⁷⁷ (1807) 1 Camp. 94.

⁷⁸ *Street v. Benning* (1854), 16 C. B. 459; 24 L. J. C. P. 175.

⁷⁹ *Bradbury v. Hotten* (1872), L. R. 8 Ex. 1; 42 L. J. Ex. 28.

will not excuse him where the effect is of necessity to supersede the sale of the original work, or even to injure it.⁸⁰

Remedy for Infringement.—The remedy for Infringement of copyright is by action for damages or an injunction or both.

As already stated,⁸¹ no action will lie unless the work alleged to have been pirated has been duly registered.

Any one who prints, or causes to be printed, a work infringing a copyright is liable to be sued, but a mere bookseller or private person is liable only if he sells it, or hires it out, or has it in his possession for sale or hire, knowing it to be an infringement of a copyright.

The words of the statute⁸² are as follows: "That if any person shall in any part of the British dominions after the passing of this Act print or cause to be printed either for sale⁸³ or exportation any book in which there shall be subsisting copyright, without the consent in writing of the proprietor thereof, or shall import for sale or hire any such book so having been unlawfully printed from parts beyond the sea, or knowing such book to have been so unlawfully printed or imported, shall sell, publish, or expose to sale or hire or cause to be sold, published, or exposed to sale or hire, or shall have in his possession for sale or hire, any such book so unlawfully printed or imported, without such consent as aforesaid, such offender shall be liable to a special action on the case at the suit of the proprietor of such copyright, to be brought in any

⁸⁰ *Scott v. Stamford* (1867), L. R. 3 Eq. 718; 36 L. J. Ch. 729; *Bohn v. Bogue* (1846), 10 Jur. 420.

⁸¹ Page 197.

⁸² 5 and 6 Vict., c. 45, s. 15.

⁸³ Notwithstanding the words "for sale," it was held in *Norello Ludlow* (1852), 15 C. B. 177, that where a copyright work was reprinted for gratuitous circulation the owner of the copyright could, by the common law, maintain his action.

court of record in that part of the British dominions in which the offence shall be committed."

The defendant is by sec. 16 of the statute bound to give the plaintiff notice of the objections on which he means to rely. "The defendant on pleading thereto [*i.e.*, to any action for infringement of copyright] shall give to the plaintiff a notice in writing of any objections on which he means to rely on the trial of such action; and if the nature of his defence be that the plaintiff in such action was not the author or first publisher of the book in which he shall by such action claim copyright, or is not the proprietor of the copyright therein, or that some other person than the plaintiff was the author or first publisher of such book, or is the proprietor of the copyright therein, then the defendant shall specify in such notice the name of the person who he alleges to have been the author or first publisher of such book, or the proprietor of the copyright therein, together with the title of such book, and the time when and the place where such book was first published, otherwise the defendant in such action shall not at the trial or hearing of such action be allowed to give any evidence that the plaintiff in such action was not the author or first publisher of the book in which he claims such copyright as aforesaid, or that he was not the proprietor of the copyright therein; and at such trial or hearing no other objection shall be allowed to be made on behalf of such defendant than the objections stated in such notice, or that any other person was the author or first publisher of such book, or the proprietor of the copyright therein, than the person specified in such notice, or give in evidence in support of his defence any other book than one substantially corresponding in title, time, and place of publication with the title, time, and place specified in such notice."⁸⁴

⁸⁴ On this section see *Boosey v. Purday* (1847), 10 Jur. 1038; *Leader v. Purday* (1848), 7 C. B. 4; 18 L. J. C. P. 97; *Boosey v. Davidson* (1848), 13 Q. B. 257; 18 L. J. Q. B. 174; *Hole v. Bradbury* (1879), 12 Ch. D. 886; 48 L. J. Ch. 673; *Coote v. Judd* (1884), 23 Ch. D. 727; 53 L. J. Ch. 36.

Where a "book" has been first composed or written or printed and published in the United Kingdom, no one but the proprietor of the copyright in it may (during the existence of such copyright) import or cause to be imported copies of it from abroad, on penalty of forfeiture of such copies and of £10 for every offence,⁸⁵ and double the value of every copy so imported.⁸⁶

Persons who knowingly sell, or hire out, or have for sale or hire books so unlawfully imported are subject to like penalties.⁸⁷

Proceedings under the Copyright Act (except for getting books for the British Museum and the four other privileged libraries) must be commenced within twelve calendar⁸⁸ months next after the offence complained of. But this does not prevent an action for an injunction to restrain the infringement of a copyright by continued sale of a book published more than twelve months before the commencement of the action.⁸⁹

In order to give sufficient *evidence of publication*, a copy of a work whereof the publication is to be proved must, as a rule, be produced in court and identified. The statement of witnesses that they have seen such is not enough if the book itself is possibly producible.⁹⁰

The *Damages* in a case of infringement of copyright are estimated thus: the defendant is to account for every copy of his book sold as if it had been a copy of the plaintiff's,

⁸⁵ Two or more offences against this law (which re-enacts a statute of Geo. II.) may be committed on the same day, *Brooke v. Millikin* (1789), 3 T. R. 509.

⁸⁶ 5 and 6 Vict., c. 45, s. 17. Custom-house officers are by the same section empowered to seize such books and destroy them. Hence the inquiry for Tauchnitz editions on arriving at an English port after Continental travel.

⁸⁷ *Ibid.*

⁸⁸ Sect. 26.

⁸⁹ *Hogg v. Scott* (1874), L. R. 18 Eq. 444; 43 L. J. Ch. 705.

⁹⁰ *Boosey v. Davidson* (1849), 13 Q. B. 257; 18 L. J. Q. B. 174.

and to pay to the plaintiff the profit which the latter would have made from the sale of so many additional copies.⁹¹

The registered owner of a copyright is entitled to have all the unsold copies of a piratical edition delivered up to him for his own use without making any compensation for the cost of production or publication.⁹²

Books piratically printed before registration of the proprietor of the copyright become his property after registration.⁹³

The infringement of copyrights belonging to the Universities or the colleges of Eton, Westminster, and Winchester (which are protected by a statute of George the Third) causes the offender to incur the penalty of one penny for every sheet of the book infringing the copyright (half to go to the Crown and half to the informer), and the forfeiture of the sheets themselves.⁹⁴

Rights of Public Libraries.—A copy of the first edition of every "book" published in any part of the British Dominions, and a copy of every subsequent edition thereof containing additions and alterations, must be delivered at the British Museum on a business day, between 10 and 4 o'clock: (*a*) if published in London, within one month of publication; (*b*) if published elsewhere in the United Kingdom, within three months; and (*c*) if published elsewhere, within twelve months of publication.

It must be on the best paper used, must be perfect, with all maps, &c., and must be bound, stitched, or sewed.

If demanded, a copy of every edition of every book published must be delivered to the proper officer at Stationers' Hall for each of the following libraries: the Bodleian at

⁹¹ *Pike v. Nicholas* (1869), L. R. 5 Ch. 260; 39 L. J. Ch. 435.

⁹² 5 and 6 Vict., c. 45, s. 23; *Colburn v. Simms* (1843), 2 Hare 543; *Delfe v. Delamotte* (1857), 3 K. & J. 581.

⁹³ *Isaacs v. Fiddlemann* (1880), 49 L. J. Ch. 412, not following *Hole v. Bradbury* (1879), 12 Ch. D. 886; 48 L. J. Ch. 673.

⁹⁴ 15 Geo. III., c. 53.

Oxford, the University at Cambridge, the Advocates' at Edinburgh, and the Library of Trinity College, Dublin.

These copies must also be perfect, but they may be of the kind of which most copies are issued for publication.

The demand for them is to be in writing, left at the publisher's office within twelve months after publication of the edition, and it is to be complied with within one month.

A publisher who does not comply with the requirements of the Act, in furnishing copies for the British Museum and other libraries, may be summoned to a police court and fined £5 and the value of the copy not delivered.⁹⁵

Copyright in Music.

A published musical composition is a "book" within the Copyright Act of 1842.⁹⁶ What has been written in the previous section therefore applies to it so far as is not inconsistent with the subject-matter.

"Copyright in a musical composition is infringed when a substantial portion of the music in which the copyright exists is reproduced, either without any alteration or with such alterations as are required to adapt it to a different purpose or instrument, the alterations being of such a character that the substantial identity between the original and the altered version can be recognised by the ear."⁹⁷ "Substantially, the piracy is where the appropriated music, though adapted to a different purpose from that of the original, may still be recognised by the ear. The adding of variations makes no difference in the principle."⁹⁸

A person who writes words to an old air (not the subject of copyright) and procures an accompaniment, and pub-

⁹⁵ 5 and 6 Vict., c. 45, sect. 6 to 10.

⁹⁶ See *ante*, page 189.

⁹⁷ Stephen's Digest, Art. 18, founded on *D'Almaine v. Boosey* (1835), 1 Y. and C. Exch. 288.

⁹⁸ Lord Abinger, in *D'Almaine v. Boosey*, a case where the defendant was restrained from publishing in the form of quadrilles and waltzes airs from an opera the copyright in which was owned by the plaintiff.

lishes them together, is entitled to copyright in the whole work.⁹⁹

An arrangement for the pianoforte of an existing opera is the subject of copyright, and in registering it at Stationers' Hall the name to be given as that of the author is that of the arranger, not that of the composer of the opera.¹

The right to perform in public copyright musical compositions belongs to the author or his assignee,² and infringement entails a penalty of 40s., which the owner of the right may sue for.³

Copyright in Lectures.

The author or giver of a lecture delivered to pupils or to an audience admitted by ticket may prevent the publication for profit of a report of such lecture.⁴

If a person gives a lecture anywhere (except at a university, public school, or college, or on any public foundation, or under or by virtue of any gift, endowment, or foundation) and he, two days at least before it is delivered, gives notice in writing to two Justices of the Peace living within five miles of the place where such lecture is delivered of his intention so to deliver it, the copyright belongs to him or his assignee, and he or the assignee can, if any one publishes such lecture without his consent, or sells it knowing it to be copied or published without such consent, insist by action in the High Court on the forfeiting of every copy, and the defendant must pay one penny for every

⁹⁹ *Leader v. Purday* (1848), 7 C. B. 4; 18 L. J. C. P. 197; *Lover v. Davidson* (1856), 1 C. B. N. S. 182.

¹ *Wood v. Boosey* (1868), L. R. 3 Q. B. 223; 37 L. J. Q. B. 84. See *Fairlie v. Boosey* (1879), 4 App. Cas. 711.

² 5 and 6 Vict., c. 45, s. 20; *Chapell v. Boosey* (1882), 21 Ch. D. 232; 51 L. J. Ch. 625.

³ 3 and 4 Wm. IV., c. 15, s. 2. *Wall v. Taylor* (1883), 11 Q. B. D. 102; 52 L. J. Q. B. 558; 45 and 46 Vict., c. 40.

⁴ See *ante*, p. 188. *Abernethy v. Hutchinson* (1848), 1 H. & T. 28; *Nicholls v. Pitman* (1884), 26 Ch. D. 374; 53 L. J. Ch. 552.

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copy found in his custody, one half to the Crown and the other half to the informer.⁵

If the lecture is published in a newspaper, the newspaper proprietor is liable to these penalties.⁶

The enactment if enforced against newspapers would be absurdly severe, but it would probably be construed literally, and if so construed it would not cover the publication of a report or epitome of the lecture.

Copyright in Pictures, Engravings, &c.

The right to copy, engrave, reproduce, and multiply any original painting, drawing, or photograph and the design or negative thereof is in the author,⁷ and it lasts during his life and for seven years beyond.

If the painting, drawing, or negative of the photograph is made for or on behalf of any other person for valuable consideration, the copyright vests in such person.

If an original painting, drawing, or negative of a photograph is transferred for valuable consideration by the original owner of the copyright to a third person, the copyright in it ceases to exist, unless at the time of the transfer such owner, by agreement in writing with the transferee, either reserves it to himself, or transfers it to the transferee.⁸

Nothing in the Act conferring copyright in a painting, drawing, or photograph prejudices the right of any person to represent any scene or object, notwithstanding that there may be copyright in some representation of such scene or object.⁹

⁵ 5 and 6 Wm. IV., c. 65, s. 1.

⁶ *Ibid.*, sect. 2.

⁷ 25 and 26 Vict., c. 68, s. 1. The "author" of a photograph is the man who "takes" the negative, not the employer of that man. *Nottage v. Jackson* (1883), 11 Q. B. D. 627; 52 L. J. Q. B. 760.

⁸ 8 Geo. II., c. 13, s. 1; 7 Geo. III., 38, ss. 1, 2, 6.

⁹ 25 and 26 Vict., c. 68, s. 2.

A register of copyrights in paintings, drawings, and photographs is kept at Stationers' Hall.¹⁰

The copyright in prints¹¹ vests in the original owner or his assignee for twenty-eight years from the first publication thereof.

The original owner of the copyright in a print of any subject is (1) the inventor or designer, graver, etcher, or worker in mezzotint or chiaro-oscuro of it; or (2) the person who, from his own work, design, or invention, caused or procured the print to be designed, graved, etched, &c.; or (3) the engraver, etcher, &c., or person who caused the engraving, etching, &c., of a print worked from any picture, drawing, model, or sculpture, ancient or modern.¹²

But there is no copyright unless the name of the proprietor and the date of publication are truly engraved and printed on every of the prints.¹³

It is no piracy of one engraving to make another from the original picture unless there be a servile imitation.¹⁴

In *Tuck v. Canton*,¹⁵ the plaintiff Tuck had bought from the other plaintiffs, who were the duly registered assignees of the copyright in a picture, the sole right to reproduce the picture by chromo-lithography for two years. Before the expiration of the two years the defendant published a chromo-lithograph of the picture, not copied from the plaintiff's chromo-lithograph. It was held by Mathew, J.,

¹⁰ Sect. 4.

¹¹ "Prints" includes prints taken from copper or steel plates, lithographic stone, zinc, or any other mechanical process. See 15 and 16 Vict., c. 12, s. 14. *Graves v. Ashford* (1867), L. R. 2 C. P. 410; 36 L. J. C. P. 139.

¹² 8 Geo. II., c. 13, s. 1, as amended by 7 Geo. III., c. 38.

¹³ *Ibid.*, and see *Newton v. Cowie* (1827), 4 Bing. 234; *Brooks v. Cock* (1835), 3 A. & E. 138.

¹⁴ *De Berenger v. Wheble* (1819), 2 Starke 548; *Trustler v. Murray* (1798), 1 East 163 n.

¹⁵ (1882) 51 L. J. Q. B. 563.

that the plaintiff Tuck was entitled to damages, inasmuch as the defendant had infringed the copyright in the original picture ; and that Tuck, being a licensee, and not an assignee, his interest did not require to be registered. The fact that no name of the proprietor or date of publication appeared on the plaintiff's publication did not stand in the way.

Engravings in a "book" are protected as books.¹⁵

Infringement of copyright in prints is punishable with forfeiture of all plates and copies, and payment of five shillings a copy found in the custody of the defendant.¹⁶

Infringement of copyright in pictures, drawings, or photographs is punishable with forfeiture to the owner of the copyright of all the pirated copies, and a sum not exceeding £10 for each copy sold¹⁷ ; and the party aggrieved may also bring an action for damages.¹⁸

There are also penalties for fraudulently marking pictures, &c., with names, initials, or monograms, and for selling pictures, &c., knowing them to be so fraudulently marked.¹⁹

Dramatic Copyright.

This subject is almost entirely beyond the scope of this work, but it may perhaps be usefully stated that a person who employs another to write a play for him and even suggests the subject does not thereby become the proprietor of the copyright.²⁰

International Copyright.

The Act 7 Vict., c. 12, provides for the granting of copyright in the United Kingdom to foreign authors whose works are first published in a country between which and

¹⁵ See *ante*, p. 189.

¹⁶ 8 Geo. II., c. 13, s. 1.

¹⁷ 25 and 26 Vict., c. 68, s. 6. *Exp. Beal* (1868), L. R. 3 Q. B. 387 ; 37 L. J. Q. B. 161.

¹⁸ Sect. 11.

¹⁹ Sect. 7.

²⁰ *Levy v. Rutley* (1871), L. R. 6 C. P. 523 ; 40 L. J. C. P. 244.

this country there is a copyright convention.²¹ Its provisions are modified in many ways by the Amending Act of 1886 (49 and 50 Vict., c. 33), and in order to understand the application of the Acts to any case it is necessary to consult the Order in Council applicable to it, and the provisions of the law of the foreign country. This is beyond the scope of the present work.

Where international copyright exists the owner of the copyright has the power to prevent the production in or importation into the United Kingdom of pirated copies or translations, and a lawfully produced translation is similarly protected.²²

If an authorised translation be not produced within ten years from the publishing of the original work, or of the first part thereof, the author's protection ceases.²³

The proprietorship of international copyright has to be registered here in such a way (if any) as the Order in Council provides.²⁴

Articles of political discussion published in any newspaper or periodical in a foreign country may always, if the source from which they are taken is acknowledged, be republished or translated in any newspaper or periodical in this country.

Articles on other subjects so published may be republished or translated in any newspaper or periodical in this country unless the author has signified his intention of reserving the copyright therein, and the right of translating the same, by notice in some conspicuous part of the newspaper or periodical in which the articles were first published.²⁵

²¹ There is such a convention with most European States, but none with the United States of America.

²² 15 Vict., c. 12, s. 9; 49 and 50 Vict., c. 33, s. 5.

²³ 49 and 50 Vict., c. 33, s. 5.

²⁴ *Ibid.*, s. 4.

²⁵ 15 and 16 Vict., c. 12, s. 7.

CHAPTER XV.

IMITATION OF TITLE, APPEARANCE, ETC.

It has already been stated²⁶ that there is, as a rule, no copyright, strictly so called, in the title to a book, magazine, or newspaper.²⁷ But there is vested in the proprietor a right analogous to that of trade mark or trade name; so that if a certain book or newspaper has become known to the public under a certain name or title, the proprietor of the right to publish such book or newspaper can restrain any other person from publishing a book or newspaper with a title so similar that it is calculated to deceive the public into a belief that the new publication is the old one, or belongs to the proprietor of the old one.²⁸ The same principle applies where a new publication is made so to resemble the old one in appearance that one may readily be mistaken for the other. This is a fraud which will be restrained by injunction and punished in damages.²⁹

But in every case of this kind the plaintiff has to satisfy the Court (1) that his publication is known to the public under a certain title, or in a certain special and distinctive cover or "get up," and (2) that the defendant has imitated it in such a way that it is calculated to deceive the public into buying the defendant's goods instead of the plaintiff's. We will consider some of the cases which illustrate these principles.

In *Walter v. Emmott*,³⁰ the plaintiffs were the proprietors of "*The Mail*," a tri-weekly edition of *The Times* newspaper, published at twopence, and circulated chiefly in the provinces and abroad, while the defendant was the publisher

²⁶ *Ante*, p. 190.

²⁷ So stated per Jessel, M. R., and James, L. J., in *Dicks v. Yates* (1881), 18 Ch. D. 76.

²⁸ *Dicks v. Yates*, *ubi supra*; *Walter v. Emmott* (1885), 54 L. J. Ch. 1059; 53 L. T. 437.

²⁹ See *Mack v. Petter*, and *Metzler v. Wood*, cited *infra*.

³⁰ *Ubi supra*.

of "*The Morning Mail*," a halfpenny daily paper of four pages, published and chiefly circulated in London. The plaintiffs claimed an injunction restraining the defendants from using the word "Mail" in the title of their paper. The action was dismissed by Mr. Justice Pearson (whose decision was confirmed by the Court of Appeal) on the ground that the plaintiffs had no exclusive right to the title "Mail"; that "*The Mail*" and "*The Morning Mail*" were distinct titles, not likely to be confounded, and that no one wanting the plaintiffs' paper—a twopenny tri-weekly of several pages—would be likely to be deceived if when they asked for "the Mail" they were handed the "*Morning Mail*," a halfpenny daily sheet of four pages. The plaintiffs had adduced evidence that a journalist had bought a copy of *The Morning Mail* thinking it to be *The Mail*, and that letters and advertisements intended for *The Morning Mail* had been delivered at the plaintiffs' office, yet this availed not.

The case of *Cowen v. Hulton*,³¹ was somewhat similar. There the plaintiffs were the proprietors of "*The Newcastle Daily Chronicle*," an old-established penny morning paper, published at Newcastle-on-Tyne, and the defendants were the publishers of a new sporting paper called *The Sporting Chronicle*, issued at Manchester. The action was for an injunction restraining the defendants from publishing their paper in Newcastle and its neighbourhood with the word "Chronicle" in the title. The plaintiffs adduced evidence that their paper gave much sporting news, and was much bought in the north of England by persons requiring such intelligence; that it was popularly known there as "the Chronicle," and that the sale of the *Sporting Chronicle* in Newcastle and its neighbourhood was calculated to deceive the public into the belief that it was the plaintiffs' paper. The appearance and contents of the two papers was quite different, and there was no evidence of any buyer having

³¹ (1882) 46 L. T. 897.

been deceived. The action was dismissed by Mr. Justice North, and his decision was affirmed on appeal.³²

Exact similarity of title will not always give a right to an injunction. Thus it would be idle to suppose that the proprietors of the copyright of Thackeray's novel, "Vanity Fair," could have procured an injunction restraining the publication of the now well-known sixpenny weekly journal of fashionable gossip and satire called *Vanity Fair*. The publication of the latter was not "calculated to deceive unwary intending purchasers" of the novel into the belief that they were getting Thackeray's work when they bought the paper mentioned; but if some one were to publish another *book* called "Vanity Fair," without clearly showing that it was by another author, the owners of the copyright in Thackeray's work might get an injunction.³³

The mere fact that some person has been deceived by similarity of title or of appearance is not sufficient ground for an injunction. The Court must determine whether the similarity is calculated to deceive unwary persons of ordinary intelligence;³⁴ or in the words of Lord Cranworth,³⁵ whether "ordinary purchasers purchasing with ordinary caution are likely to be misled."

A few years ago Messrs. Routledge, the publishers, commenced the publication of popular non-copyright works in volumes of good print but small size, bound in a novel manner, with red cloth backs and marble paper sides; other publishers very soon published editions of *other works* got up in precisely the same style. Here Messrs. Routledge might fairly complain of a moral wrong done them by the imitation, but they had no legal claim. Had

³² See similar cases given in Sebastian's Digest of Trade Mark Cases, under title "Publication," in the index.

³³ *Weldon v. Dicks* (1878), 10 Ch. D. 247; 48 L. J. Ch. 201; *Dick v. Yates* (1881), 18 Ch. D. 76; 50 L. J. Ch. 809.

³⁴ See *Walter v. Emmott*, ubi supra; and cf. Sebastian on Trade Marks and Trade Names.

³⁵ In *Seixo v. Provezende* (1866), L. R. 1 Ch. 192.

the rival publishers, however, issued in this manner the *same* non-copyright works as Messrs. Routledge, the latter could, in the writer's opinion, have maintained a successful action for an injunction, on the ground that the imitations were calculated to deceive buyers.

In *Metzler v. Wood*,³⁶ the plaintiffs were the proprietors of a musical instruction-book called "Hemy's Royal Modern Tutor for the Pianoforte," but they had no exclusive right to the word "Hemy." The defendants were proprietors of another instruction-book called "Joussé's Royal Standard and Pianoforte Tutor," and they employed Mr. Hemy to edit a new edition of this, which they brought out in a cover bearing the title "Hemy's New and Revised Edition of Joussé's Royal Standard Pianoforte Tutor," making the word "Hemy" the most prominent on the page. The two works were similar in size and form, but the cover of the plaintiffs' work was yellow, and that of the defendant's grey. It was held that this use of the word "Hemy" on the cover, or title-page, was calculated to lead the public to believe that in purchasing the defendant's work they were getting the plaintiffs', and an injunction was granted by Vice-Chancellor Malins, and sustained by the Court of Appeal.

So where the plaintiff originated a book called the "Birthday Scripture Text Book"—a kind of book now well known—and the defendants brought out a book of the same kind with a similar appearance, under the title of "The Children's Birthday Text Book," an injunction was granted by Lord Romilly, M.R.³⁷

But where the plaintiffs brought out a work called "Why and Because," treating of the scientific explanations of various common phenomena of life by way of questions and answers, and the defendants afterwards brought out a similar work entitled "The Reason Why," it was held that

³⁶ (1878) 3 Ch. D. 606; 47 L. J. Ch. 625.

³⁷ *Mack v. Pether* (1872) L. R. 14 Eq. 431; 41 L. J. Ch. 781.

the plaintiffs were not entitled to an injunction because the mode of treating of subjects by question and answer was very old, and because the title of the second book was not so similar to that of the first as to be calculated to deceive.³⁸

In *Kelly v. Byles*,³⁹ the plaintiffs had for years brought out "Post Office" Directories of many towns, including Bradford, and the defendants having announced that they were about to bring out "The Bradford Post Office Directory," an action was brought to restrain them from doing so. It was held by Vice-Chancellor Bacon and the Court of Appeal that the plaintiffs had no exclusive right to the words "post office,"⁴⁰ and the defendants' work bearing no similarity in appearance or price to the plaintiffs', the action was dismissed.

In *Maxwell v. Hogg*,⁴¹ the dispute was about the title "Belgravia" for a magazine. Messrs. Hogg had in 1863 conceived the idea of bringing out a magazine entitled "Belgravia: a magazine of fashion and amusement," and they the same year registered that title at Stationers' Hall, but did not publish the magazine. In 1866 Mr. Maxwell arranged to bring out "Belgravia: a London magazine," and advertised that he would issue the first number on a given day. Messrs. Hogg thereupon hastily prepared a number of a magazine and issued it, under the title of "Belgravia," a few days before Mr. Maxwell's came out, and on the publication of the latter there were cross-actions. It was decided that neither party was entitled to an injunction. Messrs. Hogg got no right by registering a bare

³⁸ *Jarrold v. Houlston* (1857), 3 K. & J. 708.

³⁹ (1880) 13 Ch. D. 682; 49 L. J. Ch. 181.

⁴⁰ There were "Post Office Directories" at Bath, Edinburgh, and other places not published by the plaintiffs, and there were two "Post Office Directories" of London, one by the plaintiffs and the other by another publisher.

⁴¹ (1867), L. R. 2 Ch. 307; 36 L. J. Ch. 433.

title or idea,⁴² and Mr. Maxwell gained no exclusive right to the title "Belgravia" because he had first advertised it ; then, too, Messrs. Hogg, although their magazine was out before Mr. Maxwell's, could not restrain Mr. Maxwell from bringing out a magazine under the same title, because their magazine had been out too short a time to have become known to the public, and therefore the publishing of the second "Belgravia" could not deceive. Thus the final result was that each party was held entitled to publish a magazine called "Belgravia," leaving the trade and the public to distinguish between the two as they could.

⁴² See *ante*, p. 188.

CHAPTER XVI.

RELATIONS BETWEEN AUTHORS AND PUBLISHERS.

FEW books are brought out by their authors without the intervention of a publisher.

The terms between author and publisher are entirely matters of agreement. Thus, the publisher may employ the author to write the book for him, and then the copyright will belong to the publisher if that was expressly or impliedly part of the bargain, but otherwise it will belong to the author.⁴³

Or the author may employ the publisher to publish his work, in which case, in the absence of agreement to the contrary, the copyright and the profits will belong exclusively to the author, and the publisher will be entitled to charge him a reasonable sum for the work he does in addition to all proper expenses.

But where the copyright is not purchased out and out by the publisher it is usual that there should be an agreement between him and the author as to outlays and profits. A common agreement is that the publisher shall at his own risk and expense print and publish the work in question, and that he shall pay the author a royalty on each copy sold. Another common agreement is that the publisher shall at his own risk print and publish the work, and shall pay the author one half of the net profits.

*Reade v. Bentley*⁴⁴ was a very instructive case on one of these agreements. There Mr. Charles Reade, the well-known author, entered into an agreement with Mr. Bentley, the publisher, that the latter "should publish at his own expense and risk a work called 'Peg Woffington,' and after deducting from the produce of the sale thereof the charges for printing, paper, advertisements, embellishments, if any,

⁴³ See *ante*, p. 193, and *Sweet v. Benning* and *Walter v. Howe*, there cited.

⁴⁴ (1857) 3 Kay & J. 271 ; 27 L. J. Ch. 254.

and other incidental expenses, including the allowance of £10 per cent. on the gross amount of the sale for commission and risk of bad debts, the profits remaining of every edition that should be printed of the work were to be divided into two equal parts, one moiety to be paid to Mr. Reade and the other to belong to Mr. Bentley; the books to be accounted for at the trade sale price, reckoning twenty-five copies as twenty-four, unless it was thought advisable to dispose of any copies, or of the remainder at a lower price, which was left to the judgment and discretion of Mr. Bentley." The questions which arose were: 1. Whose was the copyright? 2. Could the agreement be put an end to at any time? and if so, when and by whom? 3. What control had the author over print, paper, binding, or price? and 4. What constituted an "edition"?

It was decided by Vice-Chancellor Wood: 1. That the copyright belonged to Mr. Reade exclusively, and that the agreement in nowise amounted to an assignment of it; 2. That the agreement could be determined by Mr. Bentley at any time by his refusing to publish any more, and that it could be determined by Mr. Reade on the completion of any edition, by giving notice to Mr. Bentley to that effect before any expense had been incurred towards another edition; 3. That the form, price, time, number, &c., of every edition were left to the sole judgment and discretion of Mr. Bentley; and 4. That "edition" meant every quantity of books issued to the public or the trade at one time, and that when the advertisements, the printing, and other well-known expenses and acts by a publisher bringing out such quantity of copies in the ordinary way are closed, that constitutes the completion of the edition, whether the copies are taken from type or from stereotype, and whether the type is broken up or not, and whether all the copies printed are given forth and advertised for sale or retained and stored in the warehouse of the publisher.

A "half-profits" agreement between an author and a publisher has been held to be a personal one, and there-

fore in the absence of express provision to the contrary, the publisher cannot assign his interest to another.⁴⁵

Where an authoress agreed with a publisher that he should publish a work at his own expense and pay her a royalty on the copies sold, and before all the copies printed were sold she arranged with another publisher to bring out a second edition, it was held that the first publisher could not restrain her or the second publisher, for there was no implied agreement on her part not to bring out a new edition.⁴⁶

But where a publisher purchased the copyright of and the right to use the name of the defendant in "Beeton's Christmas Annual," and the defendant agreed to give his whole time to the service of the publisher, and not to engage in any other business, the defendant was restrained from advertising a rival work.⁴⁷

And where the author of a work which had run through nine editions agreed that a certain publisher should publish the tenth edition of 2,500 copies at a fixed price per copy, it was decided that the publisher could restrain any interference on the part of the author with the sale of such edition.⁴⁸

It seems that unless there is a special contract, express or implied, reserving to the author a qualified copyright, the purchaser of a manuscript is at liberty to alter and deal with it as he thinks proper.⁴⁹

But where the publisher and proprietor of the copyright of "Archbold's Practice" got to edit an edition of that work a person who did his work very badly, and the book was advertised as "Archbold's Practice" without

⁴⁵ *Stercens v. Benning* (1855), 6 De G. M. & G. 223; 24 L. J. Ch. 153; *Hole v. Bradbury* (1879), 12 Ch. D. 886; 48 L. J. Ch. 673.

⁴⁶ *Warne v. Routledge* (1874), L. R. 18 Eq. 497; 43 L. J. Ch. 604.

Ward v. Beeton (1875), L. R. 19 Eq. 207.

⁴⁸ *Sweet v. Cater* (1841), 11 Sim. 572.

⁴⁹ *Cox v. Cox* (1853), 11 Hare 118 (per V.-C. Wood).

intimation that Mr. Archbold was not the editor of that edition, it was held that damages could be recovered from the publisher for injury to the author's reputation.⁵⁰

No action lies against the executors of an author who has contracted to write a book and who dies before completing it ;⁵¹ and a bankrupt author cannot be compelled by his creditors' trustee to finish a work.⁵²

Where the author is proprietor of valuable artistic designs, and employs and pays a publisher to lay them down on lithographic stones, and to print copies therefrom, the property in the work on the stones belongs to the former, and the printer or publisher is not at liberty to rub the designs off, although the stones themselves belong to him ; but the proprietor of the designs may insist on having the stones delivered up to him with the designs upon them on paying the market price of the stones as plain stones ; and if the printer or publisher improperly rubs off such designs he will be liable to pay damages.⁵³

It is doubtful whether this holds good as regards commercial lithographic work.

⁵⁰ *Archbold v. Sweet* (1832), 1 M. & Rob. 62 ; 5 C. & P. 219.

⁵¹ *Marshall v. Broadhurst* (1831), 1 Tyr. 349.

⁵² *Gibson v. Carruthers* (1841), 8 M. & W. at page 343.

⁵³ *Vere Foster v. Marcus Ward and Co.* (1882), 9 L. R. Ireland 446 ; see also *Hole v. Bradbury* (1879), 12 Ch. D. 886 ; 48 L. J. Ch. 673 (as to blocks).

CHAPTER XVII.

THE NOISE OF PRINTING MACHINERY, ETC.

THE noise made by printing and other machinery is sometimes so great that it amounts to a nuisance, and in such case the working of the machinery will be restrained by injunction, and occasionally damages also will be awarded to the party complaining.⁵⁴

If I erect and work noisy machinery in close proximity to houses used as private residences, it is not unnatural that I should be held liable for disturbing the rest and quiet of the inhabitants, and for injuring the value of the property adjoining.

But it is not so natural that I should be liable if I have for years worked noisy machinery in certain buildings remote from others, and then the owner of land adjoining mine, with full knowledge of my machinery, chooses to put up a dwelling-house or other building so close to mine that my machinery is a nuisance to the persons who inhabit his building. Yet I am equally responsible in this case as in the other.

The law on this point was laid down by the late Master of the Rolls (Sir G. Jessel) and by the Court of Appeal in the case of *Sturges v. Bridgman*.⁵⁵ There the plaintiff was a physician who lived in a house in Wimpole Street with a short garden behind it, at the bottom of which garden were the premises of the defendant, a confectioner, who used three large pestles and mortars for pounding materials for his business. These pounding machines were worked for very many years without annoyance to the doctor, until the latter built out on his garden a new consultation-room, and then the noise and vibration much disturbed him whenever he used that room, and interfered with his auscultatory

⁵⁴ *Crump v. Lambert* (1867), L. R. 3 Eq. 409; *Fenwick v. E. Lond. Ry. Co.* (1875), L. R. 20 Eq. 544; *Sturges v. Bridgman* (1879), 11 Ch. D. 852, 48 L. J. Ch. 785.

⁵⁵ (1879) 11 Ch. D. 852; 48 L. J. Ch. 785.

examination of patients. He accordingly brought an action claiming an injunction. The defendant pleaded that his pounding machines had been used where they were, one for sixty years and the other for twenty-six years, and he claimed to be entitled to a prescriptive right to use them. There was no dispute as to the nuisance, and the only question was whether the defendant had as against the plaintiff acquired a right to make the noise. It was held that he had not. Until the new consulting-room was built there was no actionable nuisance at all, and therefore the length of time the machinery had been used availed nothing. Judgment was accordingly given for the plaintiff.

It is no answer to any action for nuisance that the plaintiff chose to come to it.⁵⁶ If I have a piece of land next to a forge, so long as I make no use of it I cannot ask to restrain the noise of the forge; but on the other hand the blacksmith cannot prevent me from using my land as I please, and if I build a house next to his forge and am then disturbed it is no answer to my action for an injunction to restrain the nuisance for him to say that he has been there many years, and that I might have known what to expect. If it were an answer, then, without buying my land or making me compensation, the blacksmith might practically prevent my making use of my property.⁵⁷

But if after the noise or other nuisance has become actionable the plaintiff, or those who preceded him in occupation or ownership of the property affected, have acquiesced in it for a considerable period, such acquiescence will be a bar to any action in respect of the nuisance. "When you find a man doing an act which is a manifest injury to another, such as fouling a stream by pouring the refuse of a manufactory into the bright trout stream of his neighbour, and his neighbour allows that to go on for a great number of years, it is not unreasonable to presume that he did it

⁵⁶ *Tipping v. St. Helen's Smelting Co.* (1866), L. R. 1 Ch. 66.

⁵⁷ See per Jessel, M. R., in *Sturges v. Bridgman*.

under some right. If he has done it openly, and his neighbour does not complain of that injury, although it is a very serious injury, it is not unreasonable to suppose that they did come to terms at some antecedent period for granting a right.”⁵⁸

But “in general a man cannot establish a right by lapse of time and acquiescence against his neighbour, unless he shows that the party against whom the right is acquired might have brought an action or done some act to put a stop to the claim without an unreasonable waste of labour and expense.”⁵⁹

By general acquiescence of the inhabitants of particular districts, noisy and offensive trades may by degrees lawfully be carried on there. A man could not now by building a house on a vacant plot of land in Bermondsey, or going into occupation of one already built there, get an injunction against the offensive smell of the tanneries which are so numerous in that locality. “Whether anything is a nuisance or not is a question to be determined, not merely by an abstract consideration of the thing itself, but in reference to its circumstances. What would be a nuisance in Belgrave Square would not necessarily be so in Bermondsey, and where a locality is devoted to a particular trade or manufacture carried on by the traders or manufacturers in a particular and established manner not constituting a public nuisance, judges and juries would be justified in finding, and may be trusted to find, that the trade or manufacture so carried on in that locality is not a private or actionable nuisance.”⁶⁰

But if another nuisance be added to existing and permitted nuisances in such a way as to considerably increase

⁵⁸ Per Jessel, M. R., in *Sturges v. Bridgman*.

⁵⁹ Per Willes, J., in *Webb v. Bird* (1861), 10 C. B. N. S. 268; 30 L. J. C. P. 384.

⁶¹ Per Thesiger, L. J., in *Sturges v. Bridgman*, ubi supra.

the discomfort already experienced, an action to stop the fresh nuisance will lie.⁶¹

"The law does not regard trifling inconvenience, but only regards inconveniences which sensibly and materially diminish the comfort and enjoyment of property. In order that a noisy trade may be an actionable nuisance, there must be not merely a nominal, but such a sensible and real damage as a reasonable man would, if subjected to, find injurious, regard being had to the situation and mode of occupation of the property. That which is a sensible and real inconvenience to property situate in one place, or occupied in one way, will be none to property situate in another place or occupied in another way. A man who lives in a town must submit himself to the consequences of the obligations of trade which may be carried on in his immediate neighbourhood, and which are actually necessary for commerce, and for the benefit of the inhabitants of the town and the public at large. All that the law requires is that the business be carried on in a fair and reasonable way, and that a man be not required to submit to greater personal inconvenience than he can, under the circumstances of the case, be reasonably required to do."⁶²

But in an action of this kind it is not a sufficient defence to show that the damage the plaintiff has suffered was caused by the reasonable and proper exercise of the defendant's trade in a reasonable and proper place.⁶³

The following actions for injunctions or damages in respect of noise in working printing machinery have been recently recorded in the *Printers' Register*: *Clemow* (proprietor of "Anderton's Hotel") v. *Heal and Mark* (May, 1878); *Clarke v. Skipper and East* (June, 1882); *Ball v. Borthwick*—*Morning Post* case—(May, 1885); *Harris v. Spottis-*

⁶¹ *Crump v. Lambert* (1867), L. R. 3 Eq. 409. *Gaunt v. Finney* (1872), L. R. 8 Ch. 8; 42 L. J. Ch. 122.

⁶² Kerr on Injunction, 2nd Edn., p. 206.

⁶³ *Scott v. Firth* (1861), 4 F. & F. 349; *Gaunt v. Finney* (1872), L. R. 8 Ch. 8; 42 L. J. Ch. 122; *Sturges v. Bridgman*, ubi sup.

woode (April, 1886); *Deakin and Smith v. Jaffray*—Birmingham *Daily Post* case—(May, 1885; Aug., 1885, and May, 1886).

The ringing of bells and the blowing of steam whistles to summon workpeople has been restrained by injunction when it has amounted to a nuisance.⁶⁴

⁶⁴ See *Soltau v. De Held* (1851), 2 Sim. N. S. 133. *Hardman v. Holberton*, W. N. 1886, p. 379. Also *ante*, p. 119.

CHAPTER XVIII.

MISCELLANEOUS MATTERS.

To attempt to deal with the whole of the law which should regulate the conduct of printers and newspaper proprietors in their businesses in a single small book would, as stated in the preface, be ridiculous. There are, however, some matters which may properly be referred to here, because of their special importance to those for whom this work is written.

Contracts.—On contracts the rights and liabilities of printers and newspaper proprietors are the same as those of other people, except so far as they may be varied by well-established exigencies and customs of the trade. Thus, if I order 140 lb. of raisins I must take them, big and little, just as they come out of the barrel, and I cannot be made to take more than 140 lb. But if I order 140 lb. of pica type I am entitled to expect a proper proportion of each letter of the alphabet, and if the fount sent me weighs 143, or even 148 lb., I am bound by the custom of the trade to take it, and to pay for the full weight ; because it is well known that in making up a fount of type the weight ordered cannot always be accurately arrived at.

Contracts, Written and Unwritten.—Unless required by some statute, no simple contract, except a Bill of Exchange, need be in writing.

The Act of Parliament which chiefly affects this matter is the Statute of Frauds, 29 Car. II., c. 3, and of this statute the most important sections are the 4th and the 17th.

The 4th section enacts “ That no action shall be brought whereby to charge any executor or administrator upon any special promise to answer damages out of his own estate ; or whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person ; or to charge any person upon any contract made in consideration of marriage ; or upon any contract or

sale of lands, tenements, or hereditaments, or any interest in or concerning them ; or upon any agreement that is not to be performed within the space of one year from the making thereof ; unless the agreement upon which such action shall be brought, or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith or some other person thereunto by him lawfully authorised."

The 17th section enacts "That no contract for the sale of any goods, wares, or merchandise for the price [value] of ten pounds sterling or upwards shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract or their agents thereunto lawfully authorised."

This statute has given rise to hundreds, and perhaps thousands of decisions, and long treatises have been written upon it.

As regards the 4th section, the points chiefly to be remembered by tradesmen are (1) That a guarantee is of no value unless it be in writing signed by the guarantor or his duly authorised agent ; (2) That where a contract cannot be performed within one year from the making of it, it cannot be enforced unless it be in writing signed as aforesaid. Thus, if I engage a servant for a year, service to commence to-day, no writing is necessary ; but if I engage him for a year from to-morrow, the contract cannot be enforced by action unless it be reduced into writing, notwithstanding that it can be determined by notice within the year.⁶⁵ Only contracts which cannot be performed on either side within a year are within the statute. Thus, a contract to sell and assign a patent to be paid for by instalments extending beyond a

⁶⁵. *Dobson v. Collis* (1856), 1 H. & N. 81 ; 25 L. J. Ex. 267

year was held not within the statute because it might be performed by the seller within the year.⁶⁶ But a contract to take in a literary work (to be published periodically) in parts extending over more than a year, and to be paid for as the parts are delivered, requires to be in writing.⁶⁷ And it would be the same with contracts for the insertion of advertisements extending over more than 12 months.

As regards the 17th section, if a man gives me an order for goods of the value of £10 and upwards without partly paying for them or giving earnest money, and he afterwards refuses to accept them, I am without remedy unless his order, or some note thereof, was in writing signed by him or his agent.

By reason of the Statute of Frauds and of the Stamp Act (to be mentioned shortly), it sometimes becomes important to ascertain whether a particular contract is one for work and materials or one for the sale of goods, wares, or merchandise. If it be the former a verbal order suffices, if the latter it will not suffice if there should be a repudiation. The question was raised in *Clay v. Yates*,⁶⁸ whether the contract entered into by a printer to print for the defendant a second edition of a work previously published by the defendant, the plaintiff to find the paper and other materials, was a contract for work and materials or a contract for the sale of goods. It was held that it was properly a contract for work and materials, the true ground of the decision being that the *whole* of the materials required were not supplied by the printer: the [literary] composition—a substantial ingredient—was supplied by the defendant,⁶⁹ and belonged to him already, and therefore it could not be sold to him by the printer.

But where a dentist contracted to make and supply to a lady a set of teeth for a certain sum, this was held a con-

⁶⁶ *Cherry v. Heming* (1849), 4 Ex. 631.

⁶⁷ *Boydell v. Drummond* (1809), 11 East 142.

⁶⁸ (1856) 1 H. & N. 73; 25 L. J. Ex. 237.

⁶⁹ Benjamin on Sales, 2nd Ed., p. 87.

tract for the sale of goods—all the materials were to be supplied by him, and the contract would result in the sale of a chattel.⁷⁰

Therefore, if a printer contract to print any literary or other work whereof the “copy” is supplied by the employer, the contract need not be in writing, although the bill for the work will come to £10 and upwards ; but if he undertake to supply so many copies of such and such a work, and the employer furnishes no “copy,” nor any appreciable part of the materials, it is a contract for the sale of goods, and within the 17th section of the Statute of Frauds.

By another Statute (9 Geo. IV., c. 14) a promise to pay a debt barred by the Statute of Limitations must be in writing signed by the party making it.

Agreement Stamp—when required.—Every ordinary agreement in writing (with some exceptions, the most important of which will be noticed later) is required by the Stamp Act, 1870, to bear a sixpenny stamp.⁷¹ This may be either an adhesive or an impressed stamp. If the former it must be cancelled at the time of making the agreement by the person first signing putting on the stamp his name or initials, or the name and initials of his firm, and the date.⁷² If it be not so stamped, the document may be impressed with a stamp (at Somerset House or other Inland Revenue office) either before execution or after. If after execution, it must be brought to be stamped within 14 days from its date if it bears one, or from its execution if it does not bear a date, or it will not be stamped without payment of a penalty. The penalty is £10, but if within a year of the first execution of the document the Commissioners of Inland Revenue be memorialised, and a good excuse be

⁷⁰ *Lee v. Griffin* (1861), 1 B. & S. 272 ; 30 L. J. Q. B. 252.

⁷¹ An agreement to let or take a house, office, &c., requires stamping as a lease : a sixpenny stamp is generally of no use.

⁷² Stamp Act, 1870 (33 and 34 Vict., c. 97), s. 24.

offered for not stamping the document in time, the penalty will be mitigated, though there is hardly ever less than 10s. penalty to pay.

If a document which requires a stamp be unstamped, it cannot be received in evidence in any court of civil procedure unless the stamp duty, and the full penalty of £10, together with £1 more, be handed to the officer of the court.⁷³ And where the terms of a contract are in writing, the writing *must* be given in evidence. Where the contract is made by two documents—say letters—it is sufficient if one of them bears a sixpenny stamp; but for prudence' sake each party to the contract should stamp (with an impressed stamp) the letter or other document which is in his possession.

Agreements which do not require a Stamp.—1. "Agreement or memorandum, the matter whereof is not of the value of £5."

2. "Agreement or memorandum for the hire of any labourer, artificer,⁷⁴ manufacturer, or menial servant."

3. "Agreement, letter, or memorandum made for or relating to the sale of any goods, wares, or merchandise."⁷⁵

If one party puts in writing the terms on which he will contract with another, and that other assents verbally, the writing will be admitted in evidence without a stamp.⁷⁶

From what has been written above, it follows that a contract to print a work from "copy" supplied by the employer need not be in writing, but that if it is, it must be stamped with a 6d. stamp if the value of the matter of the contract be £5 or more.

⁷³ *Ibid.*, s. 16.

⁷⁴ An overseer of a printing office was held an "artificer" in *Bishop v. Letts* (1858), 1 F. & F. 401.

⁷⁵ Stamp Act, 1870, Schedule tit. "Agreement."

⁷⁶ *Drant v. Brown* (1825), 3 B. & C. 665; *Hawkins v. Warde* (1825), 3 B. & C. 690; *Hudspeth v. Yarnold* (1850), 9 C. B. 625; *Clay v Crofts* (1851), 20 L. J. Ex. 361.

An order for an advertisement, accepted verbally, or impliedly by the insertion of the advertisement, does not require a stamp.

But where the order is for a series of advertisements extending over a period of time, and it amounts in value to £5 and upwards, it is prudent to get a 6d. stamp impressed upon it; though if it be verbally assented to, or fully executed, it does not, in the writer's opinion (based upon the cases cited), require one.

A contract for the supply of newspapers or books is a "contract for the sale of goods, wares, or merchandise," within both the Statute of Frauds and the Stamp Act.

Executory Contracts.—If one man contract with another to sell and deliver goods, or to make or do anything for him, and nothing be said as to the time within which the contract is to be fulfilled, the law implies a reasonable time. What is a reasonable time is a question for the jury, or judge if there be no jury—in each case having regard to all the circumstances.

Thus, where the plaintiffs agreed to make for the defendants a special facing and boring machine for £736, the same to be completed as soon as possible—"say about eight or nine weeks"—and the machine was ready for delivery and tendered eight months after the order for it was given, when it was refused on the ground of the delay, it was held that the defendants were justified in refusing to accept it.⁷⁷

When goods are ordered to be delivered by a certain day, and the time of delivery is an essential part of the bargain, if they are not delivered by that day the purchaser can refuse to take them at all, and may claim damages for the vendor's breach of contract.

So, too, if one man employs another to do work for him to be finished by a certain time, and through no fault of the employer the time is exceeded, the employer may

⁷⁷ *Muir v. Anglo-American Brush Electric Lighting Corporation* (per Grove, J., and Huddleston, B.), *Times*, Nov., 1883.

claim, or set off against the charges for the work, damages for the delay.

Damages.—The damages recoverable for a breach of contract are such as are the natural result of the breach, or as are presumed to have been in contemplation of the parties at the time of making the contract. They may sometimes be very much less than the loss actually sustained from the breach. For instance, suppose a printer agrees to print an engineer's illustrated catalogue and deliver it by a certain day; he fails to do so, and in consequence of not having the catalogues the engineer loses an order out of which he would have made £1,000 profit: the printer is not liable to make good this loss.

Damages under Sub-Contracts.—It is a common thing for a printer to undertake work the whole of which he cannot perform himself, and to give out some of it to a sub-contractor. Sometimes the printer contracts to get the work done by a certain time, and he is prevented from carrying out his contract by reason of the default of one of his sub-contractors. The question then arises whether he can recover from such sub-contractor the damages which he sustains. It does not at all follow that he can. It depends upon these matters: first, whether such damages are the *natural* consequence of the sub-contractor's default apart from all consideration of the head contract. If they are, then he can recover them from such sub-contractor; if they are not, then he can only recover from the sub-contractor the amount of the damages which are the natural consequence of that sub-contractor's default apart from consideration of the head contract, unless at or before the time when the sub-contract was entered into the sub-contractor was informed of the head contract, and of the effect a breach of contract on his part would have upon the head contractor.

Thus, suppose I enter into a contract to print a work in letterpress with coloured plates, and to deliver it bound

by a certain day under penalty of £10 a day as liquidated damages for every day's delay. The chromo work I give to Smith, ordering him to have it ready by a fixed day, giving me ample time to fulfil my contract if he fulfils his. He fails and is a week late, whereby I have to pay £50 in penalties. I cannot recover from Smith more than the ordinary damages for delivering his work a week late, which would perhaps be a few shillings only. But if before Smith took the job, I told him what my contract was, and what penalty I was under, then, if his default was the reason for my having to pay the £50, I could recover that sum from him. The same principles would apply if I contracted with X. to make for him a certain thing by a certain day, and I gave an order for some part of that thing to Z., who made default and thereby made me break my contract, in consequence of which X. refused to take the goods. I could only get from Z. as damages the full measure of my loss of profit if, before he undertook the work gave him, I informed him of the nature of my contract with X.⁷⁸

Warranty.—A warranty may be either express or implied. It must be made *at* the time of the bargain or it will (generally) be of no avail.⁷⁹ If the terms of the bargain be in writing the warranty must also be in the writing, or it will be of no use.⁸⁰ No special form of words is necessary to create a warranty, provided one is intended. The law in some cases implies a warranty, as where goods are sold by sample or by description, or are sold for a particular purpose.

Where goods are sold with a warranty of quality, express or implied, and the warranty is not fulfilled, the buyer has the choice of three remedies: (1) He may refuse to

⁷⁸ See *Hydraulic Engineering Co. v. McHaffie* (1878), 4 Q. B. D. 670.

⁷⁹ *Hopkins v. Tanqueray* (1854), 15 C. B. 130; 23 L. J. C. P. 162.

⁸⁰ *Kain v. Old* (1824), 2 B. & C. 627.

accept the goods (except in the case of a specific chattel in which the property has passed to him) ;⁸¹ or (2) he may accept the goods and bring a cross-action for the breach of warranty ; or (3) he may accept the goods, and if he has not paid for them he may deduct from or set off against their price the proper damages for the breach of warranty, and in ordinary circumstances these damages are the difference between the value of the goods delivered and the value of the goods contracted for.

Sales by Sample.—A sale by sample is a sale with an implied warranty by the vendor that the quality of the bulk shall be equal to that of the sample. But it does not necessarily follow that where a sample is shown by the vendor about the time of the bargain that the sale was a sale by sample.⁸²

In a sale of goods by sample it is an implied condition that the buyer shall have a fair opportunity of comparing the bulk with the sample, and an improper refusal by the vendor to allow this will justify the buyer in rejecting the contract.⁸³

Sales by Description.—If goods be sold by description, and the buyer does not inspect them, there is a condition precedent that they shall answer the description, and an implied warranty that they shall be saleable or merchantable.⁸⁴

Sale of Article for Specific Purpose.—Where an article is sold or supplied for a specific purpose there is an implied warranty that it is reasonably fit for that purpose, and if it is not, the vendor is liable for the damages resulting. Thus, where a carriage pole broke by reason of a defect

⁸¹ He is not bound to *return* the goods, but need only give notice that he rejects them ; it will then be the vendor's duty to fetch them away. *Grimoldby v. Wells* (1875), L. R. 10 C P. 391 ; 44 L. J. C. P. 203.

⁸² See Benjamin on Sales, 2nd Edn., p. 528.

Lorymer v. Smith (1822), 1 B. & C. 1.

⁸⁴ Benjamin on Sales, 2nd Edn., p. 539.

therein, and two valuable horses were thereby frightened and became injured, the person who supplied the pole was held liable for the damage to the horses (£130).⁸⁵ Therefore if a printer buys a printing machine there is an implied warranty on the part of the seller that it will print, and if before buying it the printer informs the seller that he wants it for a certain kind of work, and the vendor sells it for that work, there is an implied warranty that it is fit therefor.

Having stated so much generally, we will now consider shortly—

I. *The Rights and Liabilities of Printers as respects their Customers or Employers.*—The printer who executes work for a customer is entitled to charge for it the stipulated sum, or if no sum has been stipulated for, the amount that it is reasonably worth.

It is hardly necessary to say that if a man contract to do work for a certain sum he cannot charge more for it, even though he lose by the bargain.

If a printer receive an order for certain work, and nothing be said as to credit or delivery, he is entitled to payment as soon as the work is finished, and the employer has notice that it is ready. If it be part of the bargain that the printer should deliver, payment cannot be demanded until the work has been delivered; but on the other hand, the employer cannot force the printer to part with it till he pays for it. If the work be done on credit, payment cannot be enforced till the credit has expired, and if a bill be taken for the price, no action can be brought for the price till the bill has matured and been dishonoured. Further, if a definite period of credit have been agreed upon, the printer cannot take steps to recover his debt until that period has elapsed, although he have good reason to believe that his debtor is rapidly becoming insolvent.

⁸⁵ *Randall v. Newson* (1877), 2 Q. B. D. 102; 46 L. J. Q. B. 259.

But should the goods not have been actually delivered, he may stop them if he have good reason to believe that his customer is insolvent, and under such circumstances he may demand payment before being compelled to deliver.

If a printer have undertaken to execute a certain job by a particular time, and fail to keep his promise, he may be made to pay damages, but, as we have seen, only such as flow naturally from the breach of the contract.

As already stated, it is not necessary that a contract to print a book or a job should be in writing, but if it be in writing—and it is often desirable that it should be—it must be stamped with a sixpenny stamp.

If a printer knowingly print a book of an immoral, obscene, or libellous nature, he cannot recover the cost of printing; and he will in general be presumed to know the nature of a work printed in his office.⁸⁶

But if the price of the printing is paid beforehand it cannot be recovered back again by the customer.

If a printer undertakes to print a book or other work, and after he has got part of it up in type and has worked off several sheets, he discovers that it becomes libellous or immoral, he is justified in declining to go on with the work, and he can insist upon being paid for all the work he has done upon the job up to the time when he made the discovery.⁸⁷

If a man bring libellous or obscene matter to a printer and ask him to print it, promising that if he do so he, the customer, will indemnify him from all costs and damages that may arise from so doing, this promise, even though in writing, is of no legal effect, and the printer cannot recover any expense he may be put to by reason of printing the objectionable matter; the reason being that it is contrary to public policy to allow such a contract to be valid.⁸⁸

⁸⁶ See *Poplett v. Stockdale* (1825), 1 R. & M. 337; *Fores v. Johnes* (1802), 4 Esp. 97.

⁸⁷ *Clay v. Yates* (1856), 1 H. & N. 73; 25 L. J. Ex. 237.

⁸⁸ *Shackell v. Rosier* (1836), 2 Bing. N. C. 634.

Suppose the printer of a newspaper stipulates with the proprietor, before he takes the contract to print it, that if any of its numbers shall contain libellous matter the proprietor shall hold him harmless; it is doubtful whether even such an agreement as this would be valid.

A customer is not justified in refusing to accept a book or other job because there are a few errors in it. Newspaper proprietors have even been allowed to recover the price of advertisements when they have mis-spelt the advertiser's name, such mis-spelling not being very serious. But if the errors are very numerous or glaring, and evince gross carelessness on the part of the printer, the customer may refuse to accept the work.

So, too, if the contract be that a printer shall print a job in a certain manner, or equal to a certain sample, and it be done in some other manner, or in a way inferior to the sample, the printer cannot force his customer to take the work or pay for it.

Should the customer, however, take the work, although it be not in accordance with the contract, the printer will be entitled to recover a fair price for it, not exceeding the contract price.

If a person contracts to do work upon or with some property of another, and he by unskilfulness or negligence spoils or injures that property, the employer (owner of the property) can recover damages against him for the injury so done to it.

An artificer who has done work upon goods is entitled to a lien on such goods till he is paid for his work⁸⁹; so a printer has a lien on the sheets he prints, and on the stereo plates he makes for the work, but he has no lien on the "copy," or on stereo plates not manufactured by him, but put into his hands to print from, unless by express contract between him and his employer.⁹⁰

⁸⁹ See also *ante*, p. 72.

⁹⁰ *Bleaden v. Bancroft* (1829), M. & M. 465.

A lien is lost if possession of the thing is parted with, or if a cheque or bill of exchange be taken in payment. But where a printer had printed 8,750 copies of a work, published in numbers, and had delivered about 6,000, he was held entitled to retain the rest till he was paid the whole account for printing the work, and this though a separate charge was made for printing each number.⁹¹ But if there be separate contracts as to two works, there is no lien on one work for payment due upon the other.⁹²

In 1808⁹³ it was found to be the custom of the trade that a printer was not entitled to recover for printing a work until the whole was worked off.

And where a printer was employed to print a work, of which the impression was to be a certain number of copies, and a fire broke out and consumed the premises before the whole number (750 copies) was worked off, the printer was, by reason of such custom, not allowed to recover anything, although a part (210 copies) had actually been delivered.⁹⁴

But the law, when uncontrolled by custom, is that a person who performs work for another is entitled to be paid for his labour where the work is destroyed, without any fault of his, before it is completed or delivered to the employer.⁹⁵

It was proved in 1809 that there was no general custom of the trade by which printers were bound to insure for their employers the paper of the works which they print.⁹⁶

Where a printer contracted to insure for his employer the paper sent to him for printing a work, and he effected an insurance on the property in his printing office in his own name, and a fire having broken out, he recovered the amount of the insurance, but less than his own loss, it was

⁹¹ *Blake v. Nicholson* (1814), 3 M. & S. 167.

⁹² *Ford v. Baynton* (1832), 1 Dow. P. C. 357.

⁹³ *Gillett v. Mawman*, 1 Taunt. 137.

⁹⁴ *Adland v. Booth* (1835), 7 C. & P. 108.

⁹⁵ *Gillett v. Mawman*, *ubi sup.*

⁹⁶ *Mawman v. Gillett* (1809), 2 Taunt. 325.

held that that could not be set off as money received on account of the employer for the printing.⁹⁷ But under the present law the employer would be able to set off by way of counterclaim the damages he sustained by reason of the breach of a contract to insure.

When a printer is employed to print more than one number of a newspaper or magazine, it is the custom in London that the work shall not be removed from him until he receives a month's notice of the employers' intention so to remove it. The reason for this custom is to prevent the printer being left suddenly with a staff of men with nothing to do, and to enable him to seek work to replace that he is losing.

A debt which has been owing more than six years, or on account of which no payment has been made within six years, is barred by the Statute of Limitation, unless within six years prior the commencement of an action the debtor acknowledge it in writing, signed by him, in such a way that the Court can from such acknowledgment infer a promise to pay it.

II. *The Liabilities of Printers to Third Parties.*—Liabilities which do not arise out of a contract arise out of the breach of some legal duty, technically called a *tort*.

The printer, like every one else, is responsible for all torts committed by him, or by his servant within the scope of his employment.⁹⁸

Liability in respect of torts most commonly committed by printers and publishers, such as Libel, Infringement of Copyright, and Nuisance by Noise, have been already considered. There remains, however, one subject upon which a few words may be said.

When a man has a place of business he is taken to impliedly invite thither all persons who have business to do with him, and whenever a person expressly or impliedly

⁹⁷ *Gillett v. Mawman* (1808), 1 Taunt. 137.

⁹⁸ As to a master's liability for the wrongful acts of his servant, see *ante*, pp. 94 *et seq.*

invites persons on to his premises he must take care that they do not unwittingly run risk of being injured while there.

Where a man came to a factory on business, and while in such part of it as it was not improper for him to be in, fell through an unfenced hole in the floor, of the existence of which he was not aware, it was held that he could recover damages against the owner of the factory, although he had been warned by the manager that the place was dangerous, and that he had better stay close to a man who had a light.⁹⁹ But, on the other hand, where a man having no business there goes into premises—say a machine-room—and gets injured, he can recover no compensation from the owner. So, too, mere guests, or persons who, having no business there, are allowed to go into a printing office, and there get injured, can only recover damages from the master printer if the injury was caused by some hidden danger which they did not know of, but which the printer did know or ought to have known of.¹

Take this case. A. is a master printer who has a cylinder machine the ink-table of which runs out to within six inches of the wall of the building. B. is an errand-boy who, having to wait for an answer to a message, is expressly allowed to go into the machine-room to watch the machines there. Without knowing anything of the danger, and not having been cautioned, he gets between the cylinder machine and the wall, and, while there, the ink-table runs out and crushes him: the master printer is liable in damages to the boy.

Suppose, however, the boy had gone into the machine-room, having no business there, and having received no permission (express or implied) to go there: the master printer would not be liable.

If an occupier of a house have a lamp or anything else

⁹⁹ *Indermaur v. Dames* (1867), L. R. 2 C. P. 311; 36 L. J. C. P. 181.

¹ *Southcote v. Stanley* (1856), 1 H. & N. 247; 25 L. J. Ex. 339.

overhanging the path, and by reason of its imperfect condition it falls and injures a passer-by, the occupier is liable in damages to the person injured.²

So, too, if paper be hoisted by means of a crane, and the paper slip out and hurt a person lawfully underneath, he has an action for damages, unless the defendant can prove that the accident happened through no fault of his or his servants.³

Tarry v. Ashton (1876), 1 Q. B. D. 314; 45 L. J. Q. B. 260.

³ *Dyrne v. Boadle* (1863), 2 H. & C. 722; 33 L. J. Ex. 13. *Kearney v. L. B. & S. C. Ry. Co.* (1871), L. R. 6 Q. B. 759; 40 L. J. Q. B. 285.

APPENDIX A.

ANY Act of Parliament cited in this book can be obtained of Her Majesty's Printers at their office, East Harding Street, Fleet Street, London, E.C. Orders may be sent to them by post, accompanied by remittances in stamps or postal orders, to cover the cost of the Statute required, and the postage thereof. The following are the prices of single copies of the following Acts :—

	s.	d.
5 & 6 Vict. c. 45 (Copyright)	0	6
6 & 7 Vict. c. 96 (Lord Campbell's Act, Libel) ...	0	1½
9 & 10 Vict. c. 93 (Ditto, Compensation for Injuries)...	0	1½
14 & 15 Vict. c. 100 (Ditto, Obscene Publications) ...	0	4½
32 & 33 Vict. c. 24 (Newspapers, Printers, &c.)...	0	3
33 & 34 Vict. c. 75 (Education)	1	6
34 & 35 Vict. c. 31 (Trades Unions)	0	4½
38 & 39 Vict. c. 86 (Conspiracy, Intimidation, &c.) ...	0	4½
38 & 39 Vict. c. 90 (Employers and Workmen Act) ...	0	4½
39 & 40 Vict. c. 22 (Trades Unions)	0	3
39 & 40 Vict. c. 79 (Children in Employment) ...	1	0
41 Vict. c. 16 (The Factory Act)	2	4½
43 & 44 Vict. c. 23 (Children in Employment) ...	0	1½
43 & 44 Vict. c. 42 (Employers' Liability Act) ...	0	3
44 & 45 Vict. c. 60 (Newspaper Libel and Registration)	0	4½
46 & 47 Vict. c. 53 (Factory Act Amendment) ...	0	4½

APPENDIX B.

32 & 33 Vict. c. 24.

The Newspapers, Printers, and Reading Rooms Repeal Act, 1869.

An Act to repeal certain enactments relating to Newspapers, Pamphlets, and other Publications, and to Printers, Type-founders, and Reading Rooms. (12th July, 1869.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. The Acts and parts of Acts described in the first schedule to this Act are hereby repealed, but the provisions of the said Acts which are set out in the second schedule to this Act shall continue in force in the same manner as if they were enacted in the body of this Act; and this Act shall not affect the validity or invalidity of anything already done or suffered, or any right or title already acquired or accrued, or any remedy or proceeding in respect thereof, and all such remedies and proceedings may be had and continued in the same manner as if this Act had not been passed.

2. This Act may be cited as The Newspapers, Printers, and Reading Rooms Repeal Act, 1869.

FIRST SCHEDULE.

Date of Act.	Title of Act, and part repealed.
36 Geo. 3. c. 8.—	An Act for the more effectually preventing seditious meetings and assemblies.
39 Geo. 3. c. 79. in part.—	An Act for the more effectual suppression of societies established for seditious and treasonable purposes, and for better preventing treasonable and seditious practices
	In part, namely,—secs. fifteen to thirty-three, both inclusive, and so much of secs. thirty-four to thirty-nine as relates to the above-mentioned sections.

- 51 Geo. 3. c. 65.—An Act to explain and amend an Act passed in the thirty-ninth year of His Majesty's reign, intituled "An Act for the more effectual suppression of societies established for seditious and treasonable purposes, and "for better preventing treasonable and seditious practices," so far as respects certain penalties on printers and publishers.
- 55 Geo. 3. c. 101. in part.—An Act to regulate the collection of stamp duties and matters in respect of which licences may be granted by the commissioner of stamps in Ireland } In part, namely,—
Section thirteen.
- 60 Geo. 3. & 1 Geo. 4. c. 9.—An Act to subject certain publications to the duties of stamps upon newspapers, and to make other regulations for restraining the abuses arising from the publication of blasphemous and seditious libels.
- 11 Geo. 4. & 1 Will. 4. c. 73.—An Act to repeal so much of an Act of the sixtieth year of His late Majesty King George the Third, for the more effectual prevention and punishment of blasphemous and seditious libels, as relates to the sentence of banishment for the second offence, and to provide some further remedy against the abuse of publishing libels.
- 6 & 7 Will. 4. c. 76. in part.—An Act to reduce the duties on newspapers, and to amend the laws relating to the duties on newspapers and advertisements } In part, namely,—
Except secs. one to four (both inclusive), secs. thirty-four and thirty-five, and the schedule.
- 2 & 3 Vict. c. 12.—An Act to amend an Act of the thirty-ninth year of King George the Third, for the more effectual suppression of societies established for seditious and treasonable purposes, and for preventing treasonable and seditious practices, and to put an end to certain proceedings now pending under the said Act.
- 5 & 6 Vict. c. 82. in part.—An Act to assimilate the stamp duties in Great Britain and Ireland, and to make regulations for collecting and managing the same until the tenth day of October one thousand eight hundred and forty-five ... } In part, namely,—
The following words in sec. twenty: "and also licence "to any person to "keep any printing presses and "types for printing in Ireland."

- | | | |
|---|---|--|
| <p>9 & 10 Vict. c. 33. in part.—An Act to amend the laws relating to corresponding societies and the licensing of lecture rooms</p> | } | <p>In part, namely,—
So far as it relates to any proceedings under the enactments repealed by this schedule.</p> |
| <p>16 & 17 Vict. c. 59. in part.—An Act to repeal certain stamp duties and to grant others in lieu thereof, to amend the laws relating to stamp duties, and to make perpetual certain stamp duties in Ireland ...</p> | } | <p>In part, namely,—
So much of sec. twenty as makes perpetual the provisions of 5 & 6 Vict. c. 82. repealed by his Act.</p> |

SECOND SCHEDULE.

The enactments in this schedule, with the exception of section 19 of 6 & 7 Will. 4. c. 76, do not apply to Ireland.

39 Geo. 3. c. 79. sect. 28	[set out on p. 17].
" " sect. 29	[" " p. 19].
" " sect. 31	[" " p. 17].
" " sect. 34	[" " p. 20].
" " sect. 35	[" " p. 20].
" " sect. 36	[" " p. 20].
51 Geo. 3. c. 65. sect. 3	[" " p. 17].

6 & 7 Will. 4. c. 76. sect. 19.

*Discovery of proprietors, printers, or publishers of newspapers
may be enforced by bill, &c.*

If any person shall file any bill in any court for the discovery of the name of any person concerned as printer, publisher, or proprietor of any newspaper, or of any matters relative to the printing or publishing of any newspaper, in order the more effectually to bring or carry on any suit or action for damages alleged to have been sustained by reason of any slanderous or libellous matter contained in any such newspaper respecting such person, it shall not be lawful for the defendant to plead or demur to such bill, but such defendant shall be compellable to make the discovery required; provided always, that such discovery shall not be made use of as evidence or otherwise in any proceeding against the defendant, save only in that proceeding for which the discovery is made.

2 & 3 Vict. c. 12. sect. 2 [*set out on p. 16*].

2 & 3 Vict. c. 12. sect. 3.

As to books or papers printed at the University Presses.

In the case of books or papers printed at the University Press of Oxford, or the Pitt Press of Cambridge, the printer, instead of printing his name thereon, shall print the following words, "Printed at the University Press, Oxford," or "The Pitt Press, Cambridge," as the case may be.

2 & 3 Vict. c. 12. sect. 4.

No actions for penalties to be commenced except in the name of the Attorney or Solicitor General in England or the Queen's Advocate in Scotland.

Provided always, that it shall not be lawful for any person or persons whatsoever to commence, prosecute, enter, or file, or cause or procure to be commenced, prosecuted, entered, or filed, any action, bill, plaint, or information in any of Her Majesty's courts, or before any justice or justices of the peace, against any person or persons for the recovery of any fine, penalty, or forfeiture made or incurred or which may hereafter be incurred under the provisions of this Act, unless the same be commenced, prosecuted, entered, or filed in the name of Her Majesty's Attorney General or Solicitor General in that part of Great Britain called England, or Her Majesty's Advocate for Scotland (as the case may be respectively); and if any action, bill, plaint, or information shall be commenced, prosecuted, or filed in the name or names of any other person or persons than is or are in that behalf before mentioned, the same and every proceeding thereupon had are hereby declared and the same shall be null and void to all intents and purposes.

9 & 10 Vict. c. 33. sect. 1 [*set out on p. 20*].

44 & 45 Vict. c. 60.

The Newspaper Libel and Registration Act, 1881.

An Act to amend the Law of Newspaper Libel, and to provide for the Registration of Newspaper Proprietors.

(27th August, 1881)

WHEREAS it is expedient to amend the law affecting civil actions and criminal prosecutions for newspaper libel:

And whereas it is also expedient to provide for the registration of newspaper proprietors:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. In the construction of this Act, unless there is anything in the subject or context repugnant thereto, the several words and phrases herein-after mentioned shall have and include the meanings following ; (that is to say),

The word "registrar" shall mean in England the registrar for the time being of joint stock companies, or such person as the Board of Trade may for the time being authorise in that behalf, and in Ireland the assistant registrar for the time being of joint stock companies for Ireland, or such person as the Board of Trade may for the time being authorise in that behalf.

The phrase "registry office" shall mean the principal office for the time being of the registrar in England or Ireland, as the case may be, or such other office as the Board of Trade may from time to time appoint.

The word "newspaper" shall mean any paper containing public news, intelligence, or occurrences, or any remarks or observations therein printed for sale, and published in England or Ireland periodically, or in parts or numbers at intervals not exceeding twenty-six days between the publication of any two such papers, parts, or numbers.

Also any paper printed in order to be dispersed, and made public weekly or oftener, or at intervals not exceeding twenty-six days, containing only or principally advertisements.

The word "occupation" when applied to any person shall mean his trade or following, and if none, then his rank or usual title, as esquire, gentleman.

The phrase "place of residence" shall include the street, square, or place where the person to whom it refers shall reside, and the number (if any) or other designation of the house in which he shall so reside.

The word "proprietor" shall mean and include as well the sole proprietor of any newspaper, as also in the case of a divided proprietorship the persons who, as partners or otherwise, represent and are responsible for any share or interest in the newspaper as between themselves and the persons in like manner representing or responsible for the other shares or interests therein, and no other person.

2. *Newspaper reports of certain meetings privileged* [set out on p. 140].

3. *No prosecution for newspaper libel without fiat of Attorney General* [set out on p. 175].

4. *Inquiry by court of summary jurisdiction as to libel being for public benefit or being true* [set out on p. 175].

5. *Provision as to summary conviction for libel* [set out on p. 176].

6. 22 & 23 Viet. c. 17. *made applicable to this Act* [set out on p. 176].

7. *Board of Trade may authorise registration of the names of only a portion of the proprietors of a newspaper* [set out on p. 24].

8. A register of the proprietors of newspapers as defined by this Act shall be established under the superintendence of the registrar.

9. It shall be the duty of the printers and publishers for the time being of every newspaper to make or cause to be made to the Registry Office on or before the thirty-first of July one thousand eight hundred and eighty-one, and thereafter annually in the month of July in every year, a return of the following particulars according to the Schedule A. hereunto annexed; that is to say,

(a.) The title of a newspaper:

(b.) The names of all the proprietors of such newspaper, together with their respective occupations, places of business (if any), and places of residence.

10. If within the further period of one month after the time herein-before appointed for the making of any return as to any newspaper such return be not made, then each printer and publisher of such newspaper shall, on conviction thereof, be liable to a penalty not exceeding twenty-five pounds, and also to be directed by a summary order to make a return within a specified time.

11. *Power to certain parties to make return* [set out on p. 25].

12. If any person shall knowingly and wilfully make or cause to be made any return by this Act required or permitted to be made in which shall be inserted or set forth the name of any person as a proprietor of a newspaper who shall not be a proprietor thereof, or in which there shall be any misrepresentation, or from which there shall be any omission in respect of any of the particulars by this Act required to be contained therein whereby such return shall be misleading, or if any proprietor of a newspaper shall knowingly and wilfully permit any such return to be made which shall be misleading as to any of the particulars with reference to his own name, occupation, place of business (if any), or place of residence, then and in every such case every such offender being convicted thereof shall be liable to a penalty not exceeding one hundred pounds.

13. It shall be the duty of the registrar and he is hereby re-buired forthwith to register every return made in conformity

with the provisions of this Act in a book to be kept for that purpose at the Registry Office and called "the register of newspaper proprietors," and all persons shall be at liberty to search and inspect the said book from time to time during the hours of business at the Registry Office, and any person may require a copy of any entry in or an extract from the book to be certified by the registrar or his deputy for the time being or under the official seal of the registrar.

14. There shall be paid in respect of the receipt and entry of returns made in conformity with the provisions of this Act, and for the inspection of the register of newspaper proprietors, and for certified copies of any entry therein, and in respect of any other services to be performed by the registrar, such fees (if any) as the Board of Trade with the approval of the Treasury may direct and as they shall deem requisite to defray as well the additional expenses of the Registry Office caused by the provisions of this Act, as also the further remunerations and salaries (if any) of the registrar, and of any other persons employed under him in the execution of this Act, and such fee shall be dealt with as the Treasury may direct.

15. Every copy of an entry in or extract from the register of newspaper proprietors, purporting to be certified by the registrar or his deputy for the time being, or under the official seal of the registrar, shall be received as conclusive evidence of the contents of the said register of newspaper proprietors, so far as the same appear in such copy or extract without proof of the signature thereto or of the seal of office affixed thereto, and every such certified copy or extract shall in all proceedings, civil or criminal, be accepted as sufficient *prima facie* evidence of all the matters and things thereby appearing unless and until the contrary thereof be shown.

16. All penalties under this Act may be recovered before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

Summary orders under this Act may be made by a court of summary jurisdiction, and enforced in manner provided by section thirty-four of the Summary Jurisdiction Act, 1879; and, for the purposes of this Act, that section shall be deemed to apply to Ireland in the same manner as if it were re-enacted in this Act.

17. The expression "a court of summary jurisdiction" has in England the meanings assigned to it by the Summary Jurisdiction Act, 1879; and in Ireland means any justice or justices of the peace, stipendiary or other magistrate or magistrates, having jurisdiction under the Summary Jurisdiction Acts.

The expression "Summary Jurisdiction Acts" has as regards England the meanings assigned to it by the Summary Jurisdic-

tion Act, 1879; and as regards Ireland, means within the police district of Dublin metropolis the Acts regulating the powers and duties of justices of the peace for such district, or of the police of that district, and elsewhere in Ireland the Petty Sessions (Ireland) Act, 1851, and any Act amending the same.

18. The provisions as to the registration of newspaper proprietors contained in this Act shall not apply to the case of any newspaper which belongs to a joint stock company duly incorporated under and subject to the provisions of the Companies Acts, 1862 to 1879.

19. This Act shall not extend to Scotland.

20. This Act may for all purposes be cited as the Newspaper Libel and Registration Act, 1881.

THE SCHEDULES TO WHICH THIS ACT REFERS.

Schedule A. [*set out on p. 23*].

Schedule B. [*set out on p. 25*].

APPENDIX C.

1.—INDENTURE OF APPRENTICESHIP.—*Common Form.*

This Indenture witnesseth that B., of, &c., with the consent of his father C., of, &c., testified by his execution of these presents, doth put himself apprentice to A., of, &c., to learn his Art, and with him, after the manner of an apprentice, to serve from the day of the date of these presents until the full end and term of Seven years thence next following, to be fully complete and ended. During which term the apprentice his master faithfully shall serve, his secrets keep, his lawful commands everywhere gladly do. He shall do no damage to his master, nor see to be done of others, but to his power shall let or forthwith give warning to his master of the same. He shall not waste the goods of his master nor lend them unlawfully to any. He shall do no act whereby his said master may have any loss with his own goods or others during the said term without license of his said master. He shall neither buy nor sell, nor absent himself from his said master's service day or night unlawfully, but in all things as a faithful apprentice should behave himself towards his said master and all his during the said term. And the said A. in consideration thereof, and of £ (or five shillings), now paid to him by the said C., the receipt whereof he doth hereby acknowledge, his said apprentice in the Art of which he uses by the best means that he can shall teach and instruct, or cause to be taught and instructed, finding [or the said C. finding] unto the said apprentice sufficient meat, drink, physick, lodging, and all other necessaries during the said term. And for the true performance of all and every of the said covenants and agreements, each of the said parties bindeth himself unto the other by these presents. In witness whereof the parties above-named have hereunto set their hands and seals the day of in the year of Our Lord One thousand eight hundred and

Signed, sealed, and delivered by the above-	A.	O
named in the presence	B.	O
of	C.	O

2.—INDENTURE OF APPRENTICESHIP, WITH SPECIAL CLAUSES.

[Copy the preceding form down to the words "*hereby acknowledge,*" after which continue as follows:]

doth hereby covenant and agree with the said C., and also with the said B. in manner following, that is

to say, that he the said A. will take and receive the said B. as his apprentice from the day of the date of these presents, for the term of seven years, and also will during the said term, to the best of his power, knowledge, and ability, instruct the said B. in the trade or business of a Printer [s Compositor, Pressman, or Machine Manager], and in all things incident or relating thereto in such manner as he the said A. doth now or shall hereafter during the said term use or practise the same [and will, during the said term, provide the said B. with all necessary and proper board and lodging]. And will pay to the said B. during the said term, or until the sooner determination of the said apprenticeship, the respective sums following [in lieu of providing him with board and lodging], that is to say, shillings a week for the first year of the said term, shillings a week for the second year, shillings a week for the third year, &c., such payments to be made on the Friday of each week. [And will not require the said B. to attend to the business or affairs of the said A. on general holidays or for a longer period than hours in each day, unless the said B. should unavoidably be longer engaged by an extreme and unusual pressure of business.] And for the considerations aforesaid the said C. doth hereby covenant and agree with the said A. that the said B. shall faithfully, honestly, and diligently serve the said A. as his apprentice during the term aforesaid. And also that the said C., his executors, or administrators will, at his or their own expense, find and provide the said B. with good and sufficient [board, lodging,] clothing, washing, pocket-money, medicine, medical attendance, and all other necessities [save as aforesaid] during the said term. Provided always, and it is hereby agreed as follows:—

1. That in case the said B. shall at any time during the said term be wilfully disobedient to the lawful and reasonable commands of the said A., or shall otherwise grossly misconduct himself, it shall be lawful for the said A. to discharge the said B. from his service [provided that in such case he shall repay to the said C. the sum of £ for every year, and a proper sum for any fraction of a year of the said term of years which shall then be unexpired].

2. That in case the said B. shall at any time during the term of his said apprenticeship be absent from the service of the said A. from any cause whatsoever, it shall be lawful for the said A. to deduct from the weekly payments to be made by him as aforesaid, sums proportionate to the time of such absence. [And in case he shall be absent from any cause other than illness, it shall be lawful for the said A. to deduct from the said

weekly payments sums in respect of the time of such absence equal to the average earnings of the said B. during times equivalent to those of such absence, but such deductions shall not be made at a rate exceeding shillings per week.]

3. That in case the said B. shall not commence work on any morning within a quarter of an hour of the time when the office of the said A. shall be opened for work, not being earlier than 7 o'clock between the 1st April and 31st October, and 8 o'clock at other times of the year, or in case he shall absent himself from the service of his said master at any time on any day other than at and within the regular times appointed by his said master for meals, it shall be lawful for the said A. to deduct from the said weekly payments, in respect of each default or absence, a sum not exceeding threepence for any period not exceeding half-an-hour, and two pence for any further period of fifteen minutes or part of fifteen minutes.

4. That the said A. may, at his discretion, require the attendance of the said B. at any time on any day before or after the ordinary hours of business, paying to him therefor sums not less than *d.* per hour [*or* such sums as he shall deem proper].

5. That in case the said B. shall die within calendar months from the day of the date hereof [*or* in case the health of the said B. shall within that time fail so as to incapacitate him from following the trade or business of a Printer [*s* Compositor], and such failure of health shall be certified by two duly qualified medical practitioners], the said A. shall repay to the said C. the sum of £ part of the said premium or sum of £ so paid to the said A. as aforesaid, and in case such death [*or* failure of health certified as aforesaid] shall happen after such calendar months, but within years from the date hereof, then the said A. shall repay the sum of £ part of the said premium.

6. That in case the said A. shall die before the expiration of the said apprenticeship, then the executors or administrators of him the said A. shall, as soon as may be after his decease, find and provide for the said B. another proper and suitable master for such residue as shall be then unexpired of the said term of his said apprenticeship upon the same terms or upon terms equally advantageous to the said B. as are contained in these presents, and in default thereof shall pay to the said C. the sum of £ for every year, and a proportionate sum for any fraction of a year of the said term of seven years which shall at the decease of the said A. be unexpired.

7. That the said A. shall permit the said B., if he shall require the same in writing, to leave the service of him the said A. at

the expiration of the first years or at any time thereafter, and to employ the remainder of the said term for his own use or benefit without any interference or claim on the part of the said A. in or for any gains or savings thereafter made by the said B. in the aforesaid trade or business or otherwise.

In witness whereof the parties to these presents have hereunto set their hands and seals the day of One thousand eight hundred and eighty .

Signed, sealed, and delivered by the above-}	A.	O
named parties (or by the above-named A.) }	B.	O
in the presence of X. Y. }	C.	O

NOTE.—It will be obvious to the reader that it is not intended that every clause above given should be included in any one Indenture. Some are inconsistent with others, while some are framed in favour of the master, and others in favour of the apprentice. A proper selection must be made to suit each case. Several of the clauses are inserted to alter or modify the effect of the law as it exists where no provision against it is made in the Indenture (see Chapter VIII.).

Having regard to the decision in Meakin v. Morris (ante, p. 99), it is doubtful whether the provisions numbered 2, 3, and 4 could be enforced.

As to the proper stamp duties, see page 99. The stamp must be impressed either before execution or within 2 months after.

Stamped copies of the common form can be bought at the law stationers'. A form containing provisions similar to some of the special clauses above is sold by Messrs. Field and Tuer Leadenhall Street, London.

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